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# LAND REFORM IN AFGHANISTAN (LARA)

GENDER ASSESSMENT: LEGAL FRAMEWORK FOR  
WOMEN'S PROPERTY RIGHTS, FIELD FINDINGS  
FROM JALALABAD, AND RECOMMENDATIONS  
FOR POSSIBLE INTERVENTIONS



7 January 2012

This publication was produced for review by the United States Agency for International Development. It was prepared by Landesa.



This Work Plan was prepared for the United States Agency for International Development, Contract No.306-C-00-11-00514-00, Land Reform in Afghanistan Project.

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## **DISCLAIMER**

The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

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# ACRONYMS AND ABBREVIATIONS

AGCHO	Afghan Geodesy and Cartography Head Office
Arazi	Formerly the Afghan Land Authority (ALA)
dTS	Development & Training Services, Inc.
GIRoA	Government of the Islamic Republic of Afghanistan
IDLG	Independent Directorate of Local Governance
ILS	International Land Systems
<i>Jirga</i>	Assembly of Tribal Leaders
LARA	Land Reform in Afghanistan (LARA) project
LTERA	Land Titling and Economic Restructuring in Afghanistan Project (USAID)
MUDA	Ministry of Urban Development Affairs
NGO	Nongovernment Organization
NRC	Norwegian Refugee Council
PIA	Public Information and Awareness
<i>Shuras</i>	Council of Elders
SO	Strategic Objective
SOW	Scope of Work
USAID	United States Agency for International Development





# PREFACE

The United States Agency for International Development's (USAID) Land Reform in Afghanistan Project (the LARA Project) is managed by Tetra Tech ARD under USAID Contract No. 306-C-00-11-00514-00, with implementation assistance from its partners Tetra Tech DPK, International Land Systems (ILS), Development & Training Services Inc (dTS), and Landesa (formerly the Rural Development Institute). The LARA Project's primary government partners are Arazi (Afghan Land Authority), Afghan Geodesy and Cartography Head Office (AGCHO), Ministry of Urban Development Affairs (MUDA), Independent Directorate of Local Governance (IDLG), as well as the Supreme Court and selected local municipalities.

The purpose of the LARA Project is to develop a robust, enduring, and Afghan-owned and-managed land market framework that encourages investment and productivity growth, resolves/mitigates land-based conflict, and builds confidence in government's legitimacy, thereby enhancing stability in Afghan society.

The Project continues USAID/Afghanistan's support for land reform and land rights strengthening that began through the earlier LTERA Project. The LARA Project currently comprises an 18-month Base Period and a possible 18-month Option Period, with a total contract amount of \$41.8 million. While this document also includes activities and tasks under the Option Period, the current Work Plan that we operate under contemplates only the 18-month Base Period, ending on July 31, 2012.

The LARA Project is designed to contribute to USAID's AO and Afghanistan National Development Strategy. Three influences will help shape the LARA Project's contributions to this Objective: (1) the foundations provided by the former USAID Land Tenure and Economic Restructuring in Afghanistan (LTERA) project that provides a starting point and methods that can be adapted; (2) USAID/Afghanistan management objectives including Afghanization and conflict mitigation; and (3) the following major Project objectives:

1. Improve property rights delivery (land administration and formalization);
2. Enable all citizens (women, minorities, and vulnerable populations) to exercise their rights through public information awareness (PIA);
3. Strengthen land dispute resolution processes in order to reduce conflict and promote peace and stability;
4. Promote economic development through clear and enforceable property rights, PIA, land rights delivery, land dispute resolution;
5. Strengthen institutional, policy, and legal reform to secure property rights for Afghan citizens;
6. Provide assistance in the cross-cutting areas of gender, training, PIA, and private sector development.

These objectives are supported by three components that provide the over-arching structure for programming activities and tasks in the work plan are as follows:

1. **“Strengthen Land Tenure Security through Formalization and Upgrading of Informal Settlements”** - Support MUDA, Supreme Court, AGCHO, IDLG, Arazi, Communities and the Municipality of Jalalabad with informal settlements upgrading, formalization, cadastral mapping, women's inheritance and land rights law, community based dispute resolution, laws for urban planning and land use regulation, and training in planning and enforcement (related to SOW Activities 1, 2, 3, 4 & 5).

2. **“Legal Framework”** - Provide limited assistance to Arazi to identify, manage, lease, and obtain revenue from Afghan government lands and provide targeted technical assistance (related to SOW Activities 6 & 7).
3. **“Capacity Building”** - Build capacity of public (AGCHO, Arazi, IDLG, MUDA, Supreme Court) and private sector service providers to improve and streamline land tenure processes to Afghan private and public sectors (related to SOW Activity 8).

# 1.0 EXECUTIVE SUMMARY

Fulfilling the purpose and meeting the objectives of the LARA Project, while promoting *women's land rights*, requires a conscious and focused effort. In Afghanistan, customary law<sup>1</sup> dictates intra-household behavior often running counter to formal and religious laws which provide for land rights for women. In addition, understanding the local beliefs, practices and perceptions of women's land rights is critical to identifying the feasible entry-points to help strengthen women's land rights in a way that is locally appropriate, feasible, and likely to succeed. This report is intended to provide the starting place for that understanding.

This report is based on legal framework review, desk research and a field assessment of women's land rights. A number of conclusions and recommendations can be drawn from this analysis. These recommendations are both general and specific to the LARA Project; among them:

**Convene a Women's Land Rights Practitioners workshop.** The LARA Project has taken a positive step towards improving land rights for women by creating the Women's Land Rights Task-Force. It is recommended (subject to budget availability) that the LARA Project also support a conference whereby practitioners and advocates from other countries with cultural, religious or legal similarities to Afghanistan who have engaged in similar efforts come together to share comparative experiences.

**Engage Afghan women in efforts to strengthen land rights for women and learn more about the specific and nuanced sources of weakness for women's land rights.** One option for such engagements is in fostering women's groups and using those groups as a forum to raise awareness; providing women with choices and access to resources and support.

**Engage Afghan men in efforts to strengthen land rights for women and raise awareness on property rights of women under Afghan Law (including Sharia).** The legal and religious framework for women's property rights in Afghanistan is positive. It is recommended that this framework be used as a foundation to identify the most productive way to engage men in efforts to strengthen women's land rights.

**Provide text of relevant laws and training on women's land rights to dispute resolution actors including religious leaders, traditional leaders, those charged with executing decisions, judges.** It is clear from this as well as other studies that dispute resolution actors in Afghanistan need information, legal texts and legal training on provisions related to property rights for women.

**Expand women's access to dispute resolution mechanisms for land related disputes.** Even if women's property rights are strengthened, women are not invulnerable to being a party to a property related dispute. However, field findings suggest that women are unlikely to make use of dispute

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<sup>1</sup> Customary law here is defined as: a body of norms generated and enforced by a traditional, sub-state polity and governing the actions of its members. That polity and/or its norms may or may not be recognized by national law. Customary rules are best not regarded as informal, because they enjoy social sanction by a polity. See John Bruce et al., *Legal Empowerment of the Poor: From Concepts to Assessment*, USAID, 2007 at 13. Available at [http://pdf.usaid.gov/pdf\\_docs/PNADM500.pdf](http://pdf.usaid.gov/pdf_docs/PNADM500.pdf)

resolution mechanisms outside of the family, which could affect the likelihood that she will prevail especially if it is against a male family member.

**Encourage *mahr* as a way to ensure that women gain some land at marriage.** An intervention might consider encouraging including land in *mahr*, provided for in Sharia law and in the *Civil Code*, so that women gain some property at the time of marriage.

**Improve the likelihood that women gain their rights to land via inheritance.** Clearly, women have the right to inherit land and other property under the *Civil Code* and Sharia law, however, in practice, women rarely inherit land, often because it is regarded as socially unacceptable. Using Sharia law and working with local people of influence may help improve the likelihood that women inherit land as widows or as daughters.

**Explore and encourage socially acceptable ways for women to meet and organize.** For any intervention to be successful it must at least be seeking the kind of change that women themselves seek. There is some evidence that women can be proactive in their lives and that of their family, albeit in circumscribed ways. Therefore, there may be an opportunity to mobilize women around land rights, in women-only settings.

Ultimately, improving women's property rights will require the kind of behavioral change which could take many years; any intervention must keep a mid-and long- range view in mind, and must be holistic in its focus. It is abundantly clear that change for women in Afghanistan will require support from the whole community, and especially those people who wield local influence. The LARA Project provides a window of opportunity to help strengthen land rights for women in practice, by capitalizing on the very positive legal foundation for women's land rights in Afghanistan. These foundations of strong property rights for women exist in both the *Civil Code* and in Sharia law, and afford an important opportunity for change in women's lives.

## 2.0 BACKGROUND

To fulfill the purpose and meet the objectives of the LARA project, while promoting women's land rights, will require a conscious and focused effort. In societies where customary law dictates intra-household behavior, women's existing land rights are at risk of being weakened because strengthening land rights and land institutions often means increasing the rights of male heads of household and male-dominated institutions at the expense of women's rights. Ensuring that women's existing rights are protected and strengthened where possible, requires an understanding of women's current legal and customary rights. This report provides the beginnings of that assessment.

A key component of land reform activities is legal reform and, in particular, an understanding of women's rights and access to land in this context, and also what options exist to strengthen women's land rights through legal reform, advocacy, and empowerment. This Gender Assessment is a first step towards laying the groundwork for the LARA Project, by presenting the legal and customary framework for women's rights to land. It will also identify initial points of entry for reform and interventions which are feasible, within the LARA Project's scope, and workable given the social, legal and political environment. It is intended that the findings of this report will be validated with the women and men whom the recommended interventions seek to benefit, and will also more broadly inform other Project activities.

## 3.0 METHODOLOGY

This gender assessment is based on findings from a desk review conducted by Landesa, and also from field research conducted between August and September 2011, by the Afghan research organization, Education and Training Center for Poor Girls and Women of Afghanistan (“ECW”)<sup>2</sup>. Lawyers from Landesa’s Center for Women’s Land Rights worked through the LARA Project’s gender specialist, who coordinated the field assessment by ECW.

The gender assessment is intended to describe the law and practice related to women’s property rights. The assessment is qualitative in nature and intended to provide illustrations of how women’s property rights may be weak in Afghanistan, and highlight how they may be strengthened within the LARA Project’s program. This report did not intend to - nor does it claim to - provide quantitative support for the findings it contains; rather, it’s findings show examples of the range of perceptions, beliefs and practices around women’s property rights in Afghanistan, which can then be used to inform land related interventions.

The desk review identified and collected relevant laws, regulations, policies, and other secondary literature related to the informal and formal property rights of women in Afghanistan. Laws were sent to Landesa by the LARA Project team, and Landesa completed additional desk research to identify secondary sources of information on Afghan laws and customs. An initial analysis of these materials was used to create the gender assessment framework (*see* Attachment One) to guide the field assessment activities of a local research NGO. These materials were also used to inform the discussion of the legal framework in Section D, below. A summary of the questions covered in the assessment framework is provided in Box 1.

### **Box 1: Summary of Questions Guiding Field Assessment**

Perceptions, beliefs, and practices around women and: different categories of land, land ownership and transfers, access to information and extension services, marriage, polygamy, inheritance, divorce or separation, and participation in community, government and dispute resolution systems.

The field assessment was conducted by ECW a local research-focused NGO. Initially, the field assessment plan covered urban and rural communities in three municipalities<sup>3</sup>, but local circumstances, project budget and thus project priorities shifted mid-course, resulting in only one field assessment site in urban Jalalabad, Nangarhar Province. The study sample is, therefore, not representative, but does provide useful insights into trends.

Nangarhar Province is in Eastern Afghanistan bordering Pakistan. It is rich in natural resources and is a major trading route from Kabul to Pakistan. It attracts returning refugees and migrants from Pakistan, as

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<sup>2</sup> “ECW as a non-governmental, non-political and non-profit welfare organization came into being in the Taliban’s era of ruling the country where a degrading, depressing and stifling atmosphere was imposed on Afghans.” ECW, Project Implementation Work plan, 2011, *on file with author*.

<sup>3</sup> Herat, Jalalabad and Kandahar

well as nomadic tribes. In Nangarhar, thousands of *jiribs* (one hectare is 5 *jiribs*) of land is technically “government land” but disputes over such land between individuals, government, and tribes are rife.<sup>4</sup> Jalalabad City is approximately 95 miles from Kabul and is a leading trading center with neighboring Pakistan. The population is mainly Pashtun though there are also some Pashais, Tajiks, and Gujjars.

The field assessment was based loosely on the gender assessment framework found in Annex One. Key informant interviews and focus group discussions with traditional leaders, local authorities, mullahs, and individual women and men were held at the community level. Six focus groups were all male, five focus groups were all female, and one was mixed gender. For both genders, two focus groups were conducted in Regshahmardkhan and two in Angorbagh. The male focus groups had mixed participants, including some community members, daily wage earners, religious or traditional leaders, and elders. The female focus groups often consisted of only women who are housewives, some with students. The mixed gender focus group was held in Angorbagh and consisted of government, NGO, and civil society representatives. Researchers interviewing women were female, and those interviewing men were male.

Thirty-four individual men were interviewed and thirty individual women. The respondents were members of different ethnic groups, with the largest group of 18 identifying as Pashtun. They ranged in age from 20-85. See Table 1 for a breakdown of the interviewees. Some interviewees were not included in the summary in this report because there were discrepancies in the interview transcripts, the source of which was not resolved.

**Table 1: Composition of Respondents**

	Location	Gender	Age	Tribe/Ethnic Group
1	Angorbagh	Male	53	Pashtun (Afridi)
2	Regshahmardkhan	Male	65	Pashtun
3	Angorbagh - Jalalabad City	Female	35	Pashtun (Momand)
4	Angorbagh - Jalalabad City	Female	22	Pashtun (Safi)
5	Regshahmardkhan	Female	50	Pashtun (Tara khel)
6	Regshahmardkhan-Jalalabad	Female	50	Mohmand Tribe
7	Angorbagh	Male	43	Pashtun
8	Regshahmardkhan	n/a	24	n/a
9	Angorbagh	Female	70	Nasir
10	Reg Shah Mard Khan	Female	43	n/a
11	Angorbagh – Jalalabad	n/a	70	Safi
12	Angorbagh	Female	21	Safi

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<sup>4</sup>See e.g. Rebecca Murray, “Land Triggers New Conflicts,” Inter Press Service News Agency, Dec. 4, 2011, available at <http://ipsnews.net/news.asp?Id.news=106088>

	Location	Gender	Age	Tribe/Ethnic Group
13	Regshahmardkhan	Female	55	Pashtun (Alikhel)
14	Regshamardkhan	Female	40	Pashtun (Natakhail)
15	Angorbagh	Male	68	Pashtun (Khaogaini)
16	Angorbagh	Male	65	Pashtun
17	Angorbagh	Male	85	Pashtun
18	Angorbagh - De Jar Gharha	Male	46	Pashtun
19	Angorbagh - Jalalabad City	Male	70	Pashtun (Omarzai)
20	Regshahmardkhan	Male	30	Pashtun
21	Regshahmardkhan	Female	45	n/a
22	Regshahmardkhan-Jalalabad	Female	30	n/a
23	Regshahmardkhan	Male	30	Pashtun (Nasir)
24	Angorbagh - Jalalabad City	Male	36	Pashtun (Momand)
25	Angorbagh - Jalalabad	Female	30	n/a
26	Angorbagh	Female	30	n/a
27	Angorbagh	Female	50	Mirdadkhail
28	Regshahmardkhan	Female	35	n/a
29	Regshahmardkhan	Male	60	Tajik
30	Regshamardkhan	Male	24	Pashtun (Safi)
31	Angorbagh	Female	25	Sayedan
32	Reg Shah Mard Khan	Male	60	Pashtun
33	Regshahmardkhan	Male	26	Pashtun (Momand)
34	Regshahmardkand	Male	25	n/a
35	Regshahmardkhan	Male	70	n/a
36	Regshahmardkhan	Male	32	n/a
37	Angorbagh	Female	55	Pashtun
38	Regshahmardkhan	Female	45	n/a



	Location	Gender	Age	Tribe/Ethnic Group
39	Angorbagh	Female	35	Pashtana
40	Angorbagh	Male	45	(Pashtun) Stanikzai
41	Angorbagh	Male	41	Pashtun
42	Angorbagh	Male	29	Pashtun (HasanKhel)
43	Angorbagh	Male	56	Pashtun
44	NaranjBagh – Regshahmardkhan	Male	35	n/a
45	Angorbagh	Female	40	Safi
46	Angorbagh	Male	35	Pashtun
47	Regshahmardkhan-Jalalabad	Female	40	Hosainkhail
48	Angorbagh	Male	30	Pashtun (Babirkhel)
49	Angorbagh	Male	28	Pashtun (Niazi)
50	Regshahmardkhan	Female	50	n/a
51	Angurbagh - Jalalabad	Female	45	n/a
52	Angorbagh	Female	35	Sayedani
53	Regshahmardkan	Male	27	n/a
54	Regshahmardkhan	Male	24	Pashtun
55	Regshahmardkhan	Male	20	Pashtun (Shinwari)
56	Angorbagh	Female	35	Pashtun (Rahmatullahkhail)
57	Angorbagh	Female	48	Safidan
58	Regshahmardkhan-Jalalabad	Female	20	AkhundzadaKhel
59	Regshahmardkhan-Jalalabad	Male	38	n/a
60	Regshahmardkhan	Female	35	n/a
61	Regshahmardkhan	Female	50	n/a
62	Angorbagh	Male	39	Pashtun
63	Regshahmardkhan	Male	57	n/a

	Location	Gender	Age	Tribe/Ethnic Group
64	Regshahmardkhan	Female	45	Arab

Interviewees were selected based on information provided by key informants who were well known religious and tribal leaders, NGO workers, and municipality officials. The field assessment team attempted to interview people who have experienced land conflicts, inheritance problems and people who have played a role in resolution of disputes. In addition, interviewees were selected based on the duration of their residency in the area, because it was more likely that they would know about the issues people have encountered in their communities.

Two focus group discussions were held at the beginning to gain background information on the study sites. Then more specific focus groups were formed for more detailed discussions, whose composition was based on suggestions of the key informants.

Local authorities in Jalalabad were briefed in advance of the assessment, including the deputy governor of the province, deputy mayor of the city and head of the women's affairs department of the province. After their agreement, permission and guidance, the field researchers made their entry into the communities. The assessment's purpose was explained to the community leaders in the two settlements before starting the interviews and data collection.

Each interview or focus group was conducted by two ECW researchers. Women interviewed female respondents and men interviewed male respondents. Each interview was transcribed, and then translated into English. The transcribed and translated interviews were then shared with Landesa as they were completed. Landesa had an opportunity to review a few early transcripts and assess whether they were on target, and provide feedback to the LARA Project's gender specialist.

## 4.0 LEGAL FRAMEWORK AND FINDINGS

This section summarizes the legal framework, secondary sources, and field findings for women's land rights in Afghanistan. Thorough guides to the legal framework for property rights more broadly are available.<sup>5</sup> The section is organized in sub-sections, covering the overarching legal framework for land and property rights in Afghanistan, property rights that arise in marriage, property rights that arise by inheritance, and property rights related to dispute resolution. Each of these sections first presents the formal law, where it exists, presents relevant research on customs or practices, and then presents findings from our field assessment in Jalalabad. This section ends with field findings on intra-household land use and management practices.

### 1. OVERARCHING LEGAL FRAMEWORK

Afghanistan is an Islamic Republic;<sup>6</sup> Islam is the religion of Afghanistan<sup>7</sup> and no law may contravene the tenets and provisions of Islam.<sup>8</sup> Pashto and Dari are the official languages of the State.<sup>9</sup> Implementing the provisions of the *Constitution* and other laws is the fundamental duty of the state<sup>10</sup>, and the state must observe all treaties to which it is a signatory including the *Universal Declaration of Human Rights*<sup>11</sup>, however the *Constitution* does not specify how the provisions of the international treaties are to be enforced in domestic courts or how the courts should deal with situations where domestic laws are in conflict with those treaties. Afghanistan has ratified the *Convention on Elimination of Discrimination Against Women*.

The *Constitution* and the *Civil Code* provide for the hierarchy of laws. The *Civil Code* takes precedence over religious jurisprudence and in cases where statutory law has a provision, the religious law cannot supersede it.<sup>12</sup> On a matter where the law is silent but for which there is religious law, “the [civil] court shall issue a verdict in accordance with the fundamental principles of *hanafi* jurisprudence of Islamic *Sharia* law to secure justice in the best possible way.”<sup>13</sup> If there is no provision in either civil law or in *Sharia* law, then the courts may rely on customary law, “provided that the convention does not contradict

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<sup>5</sup> See for instance, Conor Foley, *A Guide to Property Law in Afghanistan*, First Edition, 2005, for Norwegian Refugee Council and UNHCR (hereinafter NRC).

<sup>6</sup> The Constitution of Afghanistan 1382 (2004), Art 1

<sup>7</sup>*Id.* at Art 2

<sup>8</sup>*Id.* at Art 3.

<sup>9</sup>*Id.* at Art 16

<sup>10</sup>*Id.* at Art 6

<sup>11</sup>The Constitution of Afghanistan, Art 7.

<sup>12</sup>*Id.* Art 1.1

<sup>13</sup>*Id.* at Art 1.2

the provisions of the law or principles of justice.”<sup>14</sup> The civil courts may apply *Shia* jurisprudence in cases involving personal matters of followers of the *Shia* sect of Islam.<sup>15</sup>

According to the *Constitution*, discrimination between citizens of Afghanistan is forbidden, and all citizens, men and women, have equal rights and duties before the law.<sup>16</sup> In addition, the *Constitution* states that family is the fundamental pillar of society and is protected by the state; and the state is required to “adopt measures to...eliminate traditions, which are contrary to the religion of Islam.”<sup>17</sup>

According to one study, in practice, uncodified *hanafi* law is considered by judges as the main source of law, and is considered superior to any statutory law in the *Civil Code*.<sup>18</sup> Most judges are graduates of religious schools rather than law schools and thus lack knowledge of statutory law and thus do not refer to it in their rulings.<sup>19</sup>

The role of customary law is recognized in the Afghan *Civil Code* as “public convention” in Article 2, with regard to land and property in Article 26 (referring to “law of the locality where the property is located”) and in Article 3 by reference to those matters which are “proved by time, until no reason to the contrary exists.” Besides uncodified *hanafi* jurisprudence, customary law is also often applied in family matters.<sup>20</sup> As will be discussed further below, customary law is generally more restrictive regarding women’s rights than is *hanafi* jurisprudence of Sharia law.

With this in mind, it is will be important to train judges, traditional leaders, and religious leaders on the provisions of the *Civil Code* (and Sharia law) and to provide them with comparative information on the functions of the *Civil Code* in other Islamic states and secular states with a majority Islamic population (specifically in relation to land and property rights and in relation to women’s rights). Also, it is critical that copies of laws are available at all levels of government, the judiciary, and in the particular geographical areas where the LARA Project is focused, relevant provisions of the laws relating to women’s rights to land and property (including via inheritance, *mahr*) in ways that are accessible for all, including the illiterate and women who may be limited to their homes.

## 2. LAND OWNERSHIP, DOCUMENTATION, TRANSACTIONS AND WOMEN

Under the *Civil Code* and under Sharia law, women and men may own and transact in land; however, in practice it appears that women rarely own land, and if they do, their ownership is circumscribed by customary practices. This sub-section looks at the Civil law on ownership, use and administration, and land transactions as they relate to women’s property rights. It then provides information on trends observed in the field.

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<sup>14</sup>*Id.* at Arts 2-3.

<sup>15</sup>*Id.* at 131.

<sup>16</sup>*Id.* at Art. 22

<sup>17</sup>*Id.* at Art 54

<sup>18</sup> Max Planck Institute for Foreign Private Law and Private International Law, Family Structures and Family Law in Afghanistan: A Report of the Fact Finding Mission to Afghanistan, January –March 2005 (hereinafter “Max Planck Institute”) at 8. This report is one of the few, if not the only, field based report on how family law is practiced in Afghanistan. The research was conducted in 2005, and comprised of interviews with over 200 people in nine provinces (Kabul, Kandahar, Herat, Balkh, Badakhshan, Bamiyan, Ninagar, Kunduz, and Paktia. The interviewees were 60% male and 40% female who were judges, prosecutors, law lecturers, NGO employees, members of local *jirgas* and local councils ranging in age from 20 to 70. Most of the women interviewed worked for state institutions, though there were a few interviews of housewives. *Id.* at 3.

<sup>19</sup>Max Planck Institute, at 8.

<sup>20</sup> Max Planck Institute, at 9. Customary law consists of practices and values which are accepted, respected, and obeyed by the people. These rules may be obeyed by force, as in some cases, those who refuse application of customary law will be condemned by their families. *Id.*

Land, housing and property rights are primarily regulated by statutory decrees and by the Afghan *Civil Code* and *Civil Procedure Code*.<sup>21</sup> Under the *Civil Code*, protection, management, and use of natural resources is regulated by law<sup>22</sup> and all Afghans (male and female) may own and acquire property, unless limited by the law.

The *Civil Code* contains detailed provisions with respect to land and property rights, including but not limited to, civil status, residence, family, marriage, children's rights, wills and inheritance, contracts, loans, ownership documents and forms of proof, mortgages, land and property rights.<sup>23</sup> The section on property rights ranges from guidance on handling contracts and mortgages to rights of possession, joint rights, inheritance rights, procedures for leasing, purchase, rent and sale of property.<sup>24</sup> There are also a number of other laws relating to land and property in Afghanistan, covering such things as expropriation, taxation, surveying and registration, mortgages, pastures, forests, restitution, and provisions for land leases, and land rent.<sup>25</sup>

Under Afghan law, the judiciary is charged with both arbitrating disputes and acting as officers of land administration.<sup>26</sup> In addition, an independent Special Property Disputes Resolution Court was created by Presidential decree to deal with property disputes concerning returnees.<sup>27</sup> This court was established in 2002 and is tasked with "looking after returned refugees in Afghanistan and addressing their complaints, as to hasten the process of resolving property disputes"<sup>28</sup>

A number of successive regimes have attempted land tenure reform in Afghanistan and property rights and land reform has been controversial in Afghanistan in the recent past. State appropriation and past land "reforms" have resulted in an estimated 86% of the land area of the country technically belonging to the state, although much of the land is not under State control.<sup>29</sup>

There are multiple land ownership documents in Afghanistan, a consequence of the pluralistic legal system, the different land reform policies pursued by different regimes, and the absence of the rule of law in recent history.<sup>30</sup> Because of this, it can be very difficult to determine who are the legitimate owners of land and property.<sup>31</sup> No document is regarded as wholly reliable in practice; the same problem exists with what might be called "customary" documents, and many landholders do not have any land related documents.<sup>32</sup> Based on our findings, it is unlikely that any of this documentation will include women's names, thus, any activity which uses documents to validate or verify land rights alone, could run the risk of disenfranchising women.

Reportedly, under Afghan customary law, women are denied the right to own land. While ownership may exist for widows, daughters are deemed to surrender ownership to their bothers, often when they

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<sup>21</sup> NRC at 16

<sup>22</sup> The Civil Law of the Republic of Afghanistan, Kabul 1977, (hereinafter "Civil Code"), Art 9.

<sup>23</sup> The Civil Law of the Republic of Afghanistan, Kabul, Afghanistan, 1977.

<sup>24</sup> *Id.* at Arts 1554-2416

<sup>25</sup> See NRC Appendix 5 at 187 for a complete list.

<sup>26</sup> NRC at 17

<sup>27</sup> Decree 89 of the Head of the Transitional Islamic State of Afghanistan, Regarding the Creation of a Special Property Disputes Resolution Court, Date: 1382/9/9 (30 November 2003).

<sup>28</sup> NRC at 30 and *Id.* Art 1

<sup>29</sup> NRC at 63; citing Wily, L.A., Rural Land Conflict and Peace in Afghanistan, AREU, Kabul, February 2004.

<sup>30</sup> NRC at 43

<sup>31</sup> NRC at 44

<sup>32</sup> NRC at 45

marry. The objective of this practice is less to deprive a woman from owning land than to prevent losing land to another family through her.<sup>33</sup>

### ***Women and Land Ownership***

According to field findings, for women whose families own land and who were asked about documentation, most said they had a document (often referred to by them as a “deed”) for land ownership and that it was in the name of their husband or father-in-law.

Generally, women do not own land in the study area, although the cited reasons for this varied. Some respondents expressly stated that women are not permitted to own land, while others stated that women could own land if they had financial ability to purchase land. One woman noted that some daughters inherit land, another noted that “women are imprisoned at home, they don’t have land or anything else, due to bad traditions we are just at home and don’t know about anything.” In the rarely reported cases where women do own land, the nature of the “ownership” right may be different than that of men. For example, one woman stated that women can purchase land in their own right, but they cannot enter into a lease arrangement for that land.

Overall, many men and women believe that women cannot own land, though it is not clear if this is a cultural prohibition or if it is attributable to other factors. That being said, there are some exceptional cases where women do own land. Some examples include: when a family owns a lot of land, a woman may be gifted some at the time of marriage; or land may be given as part of *mahr* (dower), though not often. A few men reported that they live on their mother’s land, though this was not common. Some men live with and care for their widowed mothers, although the mother’s do not own the family’s land. Women-headed households appear to be extremely rare based on the responses. Only in very few interviews was there even a mention of a woman being solely responsible for taking care of her family. Respondents were not typically asked directly about the status and land ownership of widows, so this may not shed light on the question of whether women own land by inheritance as widows. Other male respondents stated that women are not able to own land by custom and for some men it was inconceivable that a woman could own land.

Such responses are not restricted to Afghanistan. In many countries, men believe women cannot own land based on custom or religion. The formal law creates a space for this to change, but the law must be known, enforced, and respected. This disconnect between the law governing women’s land rights, and beliefs surrounding women’s land rights presents an opportunity where the LARA Project could make a significant positive contribution.

### ***Women’s participation in the land market***

Women report that buying and selling land is mainly in the men’s sphere, though again the reasons for this vary. Most women stated that women do not have the authority to sell land. One woman said women do not own, buy or sell land because they have no money, but, if women have the economic means to buy land, they would. In contrast, a few women stated unequivocally that in Afghan society, women are not allowed to buy or sell land. Another woman made a qualified statement that only women who are the head of household have the authority and power to buy and sell land.

Similarly, men generally report that women do not buy and sell land. Of all those interviewed, only two men reported that women buy and sell land, and another man stated that women could if they had money. One man said that women do buy land, but only if they are heads of household, another man stated, “in Afghani society, selling and purchasing is only a male responsibility, [it is] not [for] women.”

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<sup>33</sup> NRC at 107

### *Consent for transactions in land from the household*

Though it does not appear to be required by law, there is general agreement among respondents that when household land is to be sold, other household members must give permission. Some women think it is required that the whole household gives permission to sell land, while other women believe that the owner of the land can determine who else – if anyone – within the household must consent to the sale. Only one woman reported that a mother or sister should give consent for sales of household land.

Multiple men also state that the head of the family is required to provide proof of permission to sell household land, with consent of other family members, particularly sons. The guardian of the household should get consent from other family members in order to prevent future disputes. One man stated that the seller would need proof of permission of others in the house or they could not sell the property. Another man stated that consent should come from the mother and senior brother. One man clarified the requirements from his perspective: “if the land is [titled] to a family elder, then he does not need to confer with the household members because he holds full authority. [I]f not, then the family elder must provide his consent to sell the property.”

Given that there appears to be some practice of gaining consent from other family members before a transaction can occur on household land, there is an opportunity to change the law in a way that is positive effect women. Such a change may include a provision which simply requires that all adult members of a household provide written consent before the sale or lease of household land can be completed and that such consent, where included in the transfer documents, could provide women with protection against losing the right to use household land.

### 3. MARRIAGE

In Afghanistan, women and men rarely meet before they wed, and parents are the main negotiators in arranging marriages, often seeking candidates from within their closest relatives.<sup>34</sup> The two main matters covered in marriage negotiations are *mahr*<sup>35</sup> and *walwar*.<sup>36</sup> The *Civil Code* sets the age of marriage as 16 for a girl and 18 for a boy.<sup>37</sup> According to *hanafi* law the age of marriage is when the spouses reach the age of puberty.<sup>38</sup>

#### *The Law of Marriage*

Most of the family law provisions in the *Civil Code* are based on the *hanafi* school of jurisprudence. However, certain provisions, for example those related to divorce, have been modified or improved by borrowing from the *maliki*<sup>39</sup> school of jurisprudence.<sup>40</sup> For any cases that are not foreseen by the law, the provisions of *hanafi* jurisprudence of Islamic Sharia law will be applied.<sup>41</sup>

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<sup>34</sup>Max Planck Institute, at 11.

<sup>35</sup> *Mahr* is a gift that the Muslim bridegroom offers the bride upon marriage. See “Mahr” in Encyclopedia of Islam and the Muslim World, edited by Richard C. Martin, vol 1, MacMillan Reference USA, Thompson Gale, 2004, pp 424

<sup>36</sup> Similar to bride price, this is a payment made by the groom or his family to the bride’s family, not to the bride.

<sup>37</sup>Civil Code at 70.

<sup>38</sup>Max Planck Institute at 16.

<sup>39</sup>*Maliki* and *hanafi* jurisprudence are two of four accepted Sunni authorities for Islamic jurisprudence, the other two being Shafi’I and Hanbali. See generally “Law” in Encyclopedia of Islam and the Muslim World, edited by Richard C. Martin, vol 1, MacMillan Reference USA, Thompson Gale, 2004, pp 406-408.

<sup>40</sup>Max Planck Institute at 8.

<sup>41</sup>The Law of Marriage, Art 41

The Law of Marriage governs marriage, divorce and separation in Afghanistan. It is the responsibility of the *walis*<sup>42</sup> to ensure that *imam*<sup>43</sup> of the *masjeds*<sup>44</sup> are aware of the procedures and provisions of the marriage law; and the law requires that text of the *Law of Marriage* be posted in public places.<sup>45</sup> Beyond posting the law in public places, the law does not provide for who has the authority or the obligation to enforce its provisions.

Under the *Law of Marriage*, the marriage ceremony must be done in accordance with Sharia law; traditional or customary ceremonies are invalid if done prior to the marriage contract.<sup>46</sup> Terms of a marriage contract must be written in the marriage certificate and must be considered by the *mufti*<sup>47</sup> or *imam* of the *mosque* before whom the marriage contract meeting must take place.<sup>48</sup> And a marriage contract cannot be taken in lieu of debt or *bad* (blood) money.<sup>49</sup> The marriage certificate, once registered, is retained by the bride or her representative.<sup>50</sup> The marriage contract is intended to provide terms and conditions of behavior and exchange of the parties to the marriage. As such it is one of the great strengths of Sharia law for women, in that there is room for negotiation of certain terms, including property rights for wives, such as *mahr*, as discussed below.

Notwithstanding these provisions, in the past twenty years, most marriages have not been registered, due to the disruption of administrative structures. Instead, a document is issued without official insignia on which the *mullah*<sup>51</sup> writes the names of the bride and groom, their proxies and witnesses.<sup>52</sup> The single document is then given to the groom only and copies are not recorded elsewhere or registered<sup>53</sup> thus diminishing the potential protection for women which may come from a registered marriage contract.

It appears that the marriage contract, a pillar of marriage under Sharia law has been weakened over time in Afghanistan. The LARA Project could assist women in gaining marital property (an economic asset) and land specifically, by working with religious leaders to educate those who perform marriage ceremonies on Sharia law and Civil law requirements for performing marriages.

### ***Mahr or dower***

Under the *Law of Marriage*, the bride's *mahr* ("marriage portion" of property) shall be fixed at the marriage negotiations and defined in the marriage contract, if the *mahr* is immovable property the boundaries of that property must be included in the marriage contract.<sup>54</sup> If the marriage contract takes place without *mahr*, or if only part of the *mahr* is given at the time of the marriage contract, under the

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<sup>42</sup> A *wali* is a holy person or religious scholar. See Encyclopedia of Islam and the Muslim World, edited by Richard C. Martin, vol 1, MacMillan Reference USA, Thompson Gale, 2004, p 607.

<sup>43</sup> An *imam* is a leader, model or authority. See Encyclopedia of Islam and the Muslim World, edited by Richard C. Martin, vol 1, MacMillan Reference USA, Thompson Gale, 2004, p 349.

<sup>44</sup> *Masjed* or *masjid*. Refer to the customary places for performing obligatory ritual prayer in the Muslim tradition. See Encyclopedia of Islam and the Muslim World, edited by Richard C. Martin, vol 1, MacMillan Reference USA, Thompson Gale, 2004, p 437.

<sup>45</sup> *Id.* at Art 40

<sup>46</sup> Law of Marriage, Art 1

<sup>47</sup> *Mufti*, distinct from a judge, is a *juri consult*, who stands between man a God and issues opinions with regard to the laws of God or on the deeds of man. A mufti is delegated that role by his peers. See Encyclopedia of Islam and the Muslim World, edited by Richard C. Martin, vol 1, MacMillan Reference USA, Thompson Gale, 2004, p 478.

<sup>48</sup> *Id.* Art 10

<sup>49</sup> *Id.* Art 21

<sup>50</sup> *Id.* Art 25

<sup>51</sup> *Mullah* refers to a religious leader. See Encyclopedia of Islam and the Muslim World, edited by Richard C. Martin, vol 1, MacMillan Reference USA, Thompson Gale, 2004, p 473.

<sup>52</sup> Max Planck Institute at 20.

<sup>53</sup> Max Planck Institute at 20.

<sup>54</sup> Law of Marriage Art 14



*Civil Code*, the wife is entitled to ask for it at any time.<sup>55</sup> If *mahr* is not paid at the time of marriage, then it is noted as a debt in the marriage contract. *Mahr* is the right of the bride and must be paid to the bride or her representative.<sup>56</sup> The *mahr* is not subject to tax.<sup>57</sup>

Under custom, *mahr* is usually arranged in two ways: immediate (*mahrmo'ağal*) and deferred (*mahrmowağal*). Immediate *mahr* may consist of all gifts, jewelry clothes, and engagement expenses, or it may be an apartment, parcel of land, or another valuable item paid to the bride.<sup>58</sup> The deferred *mahr* is arranged to be due at some other point in the future, which may be, but is not necessarily, divorce. After the parties reach an agreement, the details of the *mahr* should be included in the marriage contract.<sup>59</sup>

In Afghan practice, even though *mahr* is negotiated by male proxies, there is a social stigma against the woman if *mahr* is insisted on during marriage negotiations.<sup>60</sup> In addition, women undervalue the *mahr* because they understand it to be associated with divorce, and thus emphasizing it would be akin to considering a divorce while marriage negotiations are taking place.<sup>61</sup> Also, when *mahr* is paid, it is more likely paid to the bride's family rather than to her directly.<sup>62</sup>

According to field findings, there is diversity of opinion among men interviewed on whether land is commonly given as *mahr* to women during marriage negotiations. However, few men had direct personal experience of it and instead reported on their perceptions of the practices of others:

- One man states that in some places people have a tradition of giving land to women as *mahr*, but in his area, they give only money as *mahr*.
- One man states that women from rich families have land in *mahr*, and that a woman could possess her own plot and utilize it separately or jointly with her husband.
- Two men state that in the urban area where they live it does not make sense to dower land as part of dowry because people possess very little land, so they dower money or other monetary items. In rural areas, they report that people give land as dowry.
- One man says that women can have their own land in dowry and they can use it separately or jointly. He has four married sons and he has put 300 square meters land in dowry to each of his sons' wives.
- One man says that people in a nearby village give land as dowry, but not his community
- A religious leader stated that people will try to give land as dowry during marriage to the girl, but because the land is high-priced and it would be unaffordable to grant a house plot as dowry.
- It is extremely positive that there is room within Afghan culture and religion for women to own land and to receive land at the time of marriage. Even though it may not be common, and even though there may be customary resistance, there appears to be some general acceptance of the principle that women can receive land as *mahr* at the time of marriage. Capitalizing on this right

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<sup>55</sup> Civil Code art 98-114

<sup>56</sup> *Id.* Art 16

<sup>57</sup> *Id.* Art 17.

<sup>58</sup> Max Planck Institute at 12.

<sup>59</sup> Max Planck Institute at 12.

<sup>60</sup> Max Planck Institute at 12.

<sup>61</sup> Max Planck Institute at 12.

<sup>62</sup> Mohammad Hashin Kamali, *Law in Afghanistan: A Study of Constitutions, Matrimonial Law and Judiciary*, E. J. Brill, Leiden, Netherlands, 1985, at 101.

and encouraging it through education campaigns and through religious and traditional leaders who are favorable to the idea could help to begin to shift attitudes within the community.

### ***Walwar or bride price***

The *Civil Code*, attempts to prohibit the practice of *walwar* (bride price)<sup>63</sup> by providing that “[n]o one, including the relatives of the bride may, for the purpose of the marriage, ask or receive any cash or goods from the groom or his relatives.”<sup>64</sup> However, the payment of bride price is widespread. The amount paid is not fixed and varies greatly depending on the financial circumstances of the bride’s family; generally, if the bride’s family is rich, they will not ask for bride price, if the bride’s family is poor, it will be the most important matter in the marriage negotiations.<sup>65</sup> The practice of bride price requires further research; there is very little known on how the practice relates to women’s property rights in Afghanistan, though in other countries, the exchange of a bride for property underscores the belief that the bride herself is property (of her father and then of her husband) and she cannot therefore own or control real property such as land.

### ***Polygamy***

Under the Afghan *Civil Code*, polygamy can take place when: there is no fear of injustice between wives, the husband has financial means to sustain all wives, or when the first wife is unwell or cannot bear children.<sup>66</sup> The law requires consent from the woman, before a husband marries an additional wife, though the law is not clear on which woman this is (the first or second wife or both).<sup>67</sup> A woman whose husband has violated these provisions may demand a divorce.<sup>68</sup>

Polygamy is practiced to differing degrees in Afghanistan, depending on the financial and educational status of those involved.<sup>69</sup> It is especially common among those who are rich and uneducated, and highly unlikely among those who are very poor and uneducated.<sup>70</sup> Moreover, while polygamy is socially acceptable, it is also seen as a source of family problems because of competition between wives, and complications around inheritance. At the same time, since living alone as a single woman or as a divorcee for a woman is stigmatized, women may have little choice but to accept being a second or third wife.<sup>71</sup>

More information is needed on how polygamous relationships affect women’s rights to household and other land. Documenting and registering the rights of women in polygamous marriages can be complicated and it is difficult to design a system that treats everyone equally and protects all women in the relationship. To do so, requires a nuanced understanding of how marital property is distributed and used by multiple wives and their children.

### ***Divorce, separation and widowhood***

Sharia divorce is the right of the husband. He may surrender the power of divorce to his wife by a Sharia document.<sup>72</sup> Courts cannot hear cases related to marriages which do not have legal marriage documents.<sup>73</sup>

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<sup>63</sup>Also known as *toyana*, *qalin*, or *shirbahain* in different parts of the country. Max Planck Institute at 12.

<sup>64</sup>Law of Marriage Art 15

<sup>65</sup>Max Planck Institute at 12.

<sup>66</sup>Civil Code art 86

<sup>67</sup>*Id.* Art 898.

<sup>68</sup>Civil Code Art 87

<sup>69</sup>Max Planck Institute at 21.

<sup>70</sup>*Id.* at 21-22.

<sup>71</sup>Max Planck Institute at 20.

<sup>72</sup>Law of Marriage art 33

<sup>73</sup>*Id.* at 36

However, the lack of a marriage document does not cause the deprivation of inheritance (unless a Sharia document exists for deprivation of inheritance).<sup>74</sup>

If a divorce occurs, either the wife or husband may demand the divorce certificate from the court. The husband is bound to arrange the divorce documents which are registered. In some cases, the wife may request divorce or separation in accordance with the provisions of Sharia.<sup>75</sup>

Under the *Law of Marriage*, re-marriage after becoming a widow requires proof of death of the former husband.<sup>76</sup> In addition, the law prohibits contracting a widow in marriage to anyone without her consent or to prevent her from making a marriage contract of her choice.<sup>77</sup> As discussed in more detail below, under the *Civil Code*, widows may take their deferred *mahr* from the deceased's estate before it is divided between other heirs, and they also inherit from the estate as an heir.

Though the extent of the practice is not clear, there is reportedly a custom of forcing a widow to marry a member of her deceased husband's family.<sup>78</sup> In such circumstances, the widow does not have a choice of husband, and the deceased husband's relatives regard it as a right to marry her to one of their own.<sup>79</sup> Normally, additional bride price is not paid for this marriage.<sup>80</sup> It is not clear whether this practice benefits the widow, or what her options are if she does not marry a family member of her husband. The relationship between this practice, the prevalence of multi-family households, polygamy, and transfer of land via inheritance to surviving spouses requires further investigation.

#### 4. INHERITANCE

Women in Afghanistan may inherit as widows or daughters. Inheritance is one of the most frequent forms of transfer of property in Afghanistan and is regulated by the Afghan *Civil Code*.<sup>81</sup> The *Civil Code* provides for intestate inheritance based on Sharia law<sup>82</sup>, and also permits disposition of an estate by will;<sup>83</sup> however, a will may not dispose of more than one third of the deceased's estate without prior approval from the heirs.<sup>84</sup>

Under the *Civil Code*, the basis of intestate inheritance is marriage on blood relation.<sup>85</sup> Inheritance is divided between family members, according to detailed provisions set out in the *Civil Code*, after deducting the cost of the funeral and having paid the debts of the deceased.<sup>86</sup> Under the *Civil Code*, unpaid *mahr* is paid to the surviving wife (or wives) from the estate of the deceased, before it is divided under the rules of inheritance, because *mahr* is treated as a priority debt.<sup>87</sup>

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<sup>74</sup>*Id.* at 39

<sup>75</sup>*Id.* at 35

<sup>76</sup>*Id.* at 24

<sup>77</sup> Law of Marriage Art 24

<sup>78</sup> Mohammad Hashin Kamali, *Law in Afghanistan: A Study of Constitutions, Matrimonial Law and Judiciary*, E. J. Brill, Le *Id.* en, Netherlands, 1985, at 145-146.

<sup>79</sup>*Id.*

<sup>80</sup>*Id.*

<sup>81</sup> NRC 74; *The Civil Law of the Republic of Afghanistan*, Kabul, 1977, Arts 1993-2102

<sup>82</sup> *Civil Code Arts 1993-2102*

<sup>83</sup>*Id.* at Arts 2103-2195

<sup>84</sup>*Id.* at Art 2137

<sup>85</sup>*Id.* at Art 2001

<sup>86</sup>*Id.* at Art 1997, 1998

<sup>87</sup>*Id.* at Art 110

After debts and expenses are paid, the remainder of the estate is called “*matruka*” and is divided among the heirs.<sup>88</sup>

Direct family members (father, mother, son, daughter, wife, and husband) have a priority right to receive inheritance. Other family members (brothers, sisters and their children, cousins, aunts, uncles and other relations) will only receive any inheritance rights after the direct members of the family have received their share. Half of the *matruka* goes to any sons and a quarter to any daughters. The husband will receive half the *matruka* if there are no male children and a quarter if there are. The wife will receive a quarter if there are no male children and an eighth if there are. The parents will receive one eighth of *matruka*. The remainder can be divided between the wider family.<sup>89</sup>

#### **Box 2: Sharia Law for Inheritance by Women.**

God (thus) directs you as regards your children’s inheritance: to the male, a portion equal to that of two females: if only two or more, their share is two thirds of the inheritance, if only one, her share is half. For parents, a sixth share of the inheritance to each, if the deceased left children, if no children, and the parents are the (only) heirs, the other has a third; if the deceased left brothers (or sisters) the mother has a sixth. The distribution in all cases is after payment of legacies and debts. Ye know not whether your parents of your children are nearest to you in benefit. These are settled portions ordained by God: and God is all-knowing, all-wise.

Koran, Chapter 4: The Women (Surah 4-Al Nisa), Article 11, *cited in* Alden Wiley, L, *Looking for Peace on the Pastures: Rural Land Relations in Afghanistan*. Kabul: Afghanistan Research and Evaluation Unit (AREU), 2004.

Generally, under customary rules it is not considered culturally appropriate for women to inherit land. Women rarely inherit land when there is a male heir; the total property is either divided between sons or goes to the eldest son and if there are no sons, then the brother or father of the deceased.<sup>90</sup> There are significant social, economic, resource-based factors that influence whether a woman will inherit land in practice.<sup>91</sup> According to one study: it is not culturally acceptable for women to inherit; the women “love their brothers” and do not want to upset them by accepting inherited land; lack of available land; a man is believed to be responsible for feeding his wife and family therefore needs land more than a woman; it is common practice to leave land to sons (or a son) in a will; and there is practical difficulty of widows accepting land by inheritance in a multi-family household<sup>92</sup>

It is not clear in the literature whether under custom women can inherit non-land assets. In a patri-local society, like Afghanistan, where women move to their husband’s household when they marry, this provides some justification for women not inheriting land but does not explain why she may not inherit non-land assets.

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<sup>88</sup> NRC at 74: note that the Civil Code does not refer to “*matruka*” but does refer to “*farz*” (translates to “one’s duty”) to describe as the priority inheritors.

<sup>89</sup> NRC at 74. Note: the provisions of the Civil Code relating to inheritance available in English are unclear and only partially translated. The above-cited NRC report, produced for the UNHCR, provides a summary of inheritance rules, however the specific citations to the Civil Code provisions are not made. This report has selected to use the more complete NRC report as the basis for this section, however, the qualification regarding citations to Civil Code should be noted.

<sup>90</sup> NRC at 75, citing Nouchin Yawvari H’Hellencourt et al *Preliminary Study of Land Tenure Related Issues in Urban Afghanistan with special reference to Kabul City*, Ministry of Urban Development and Housing and Un-Habitat, Kabul, October-November 2002.

<sup>91</sup> See Jo Grace, *Who Owns the Farm? Rural Women’s Access to Land and Livestock* Afghanistan Research and Evaluation Unit 2005, at 18.

<sup>92</sup> *Id.* at 18-19.

According to field findings, generally, men and women interviewed are aware of the Sharia rules of inheritance for women, and agree that despite these laws, women do not inherit in practice. Among the women who answered questions about inheritance, many knew that women had a right to inherit property, but report that it is not common in practice. Some noted that sons, not daughters, are expected to inherit land. Two women noted that daughters were supposed to inherit land under Islamic law but that daughters rarely received their entitlement because it was viewed as shameful. One woman said that education and literacy is the only way that women can demand their rights, because now they are unaware of the law. One woman said “Islam has given the right of receiving inheritance to women, but it’s not in use in our community.” Another woman stated that women have a right to inherit under Islamic law from their husbands as well as their fathers, but due to “bad culture” they were excluded.

In one rare case identified in the field assessment, a woman reported that she demanded a share of her family’s land, was denied, and took the case to the elders. Another woman reported that her husband’s sister demanded a share after their father’s death and took the case to court, resulting in a judgment that each brother had to pay cash to the sister.

When respondents were asked about inheritance, almost all the men who responded referenced Sharia Law, recognizing that the right to inheritance is defined therein. One man states that “Two sisters are equal to one brother in inheritance. The wife will be granted 1/8 portion of the property.” Another man stated “inheritance should be granted to [the] individual, especially daughters and sisters. But most people do not offer their daughters [or] sisters’ entitlement. It would be better to offer their entitlement according to Islamic law.” Many men recognize that women have a right to a share but that they rarely receive their share. Even in the case of a man who stated that women are forbidden to leave the home, he believes that women have a right to inheritance under Islamic law. One man says that brothers do not grant their sisters’ their inheritance because their brothers think women do not deserve to have their father’s property.

Interestingly, a religious leader took a strong stance and stated that any person who denounces the right to inherit property as provided for by Sharia is an infidel. This statement underscores the opportunity that the LARA Project has to help strengthen women’s land rights in Afghanistan in practice by highlighting the positive provisions of Sharia law for women with religious leaders and other people of influence, and helping raise awareness of these provisions more generally.

## 5. DISPUTE RESOLUTION

The *Civil Code* provides for formal courts and the *Civil Procedure Code* guides how cases can be brought and handled within the formal court system.<sup>93</sup> Afghanistan also has a long tradition of informal justice mechanisms known as *jirga* or *shura*<sup>94</sup> which traditionally apply customary law, however may also be influenced by religious jurisprudence (see below). There does not appear to be a separate court for religious matters, but Sharia law references a consultative process for social and political affairs.<sup>95</sup>

With the formal court system barely functioning for decades due to conflict, and with widespread distrust of the official system, Afghans reportedly rely on customary law and traditional mechanisms to resolve disputes.<sup>96</sup> In practice, courts are not the first forum to hear a dispute; this is done instead by local

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<sup>93</sup> The Civil Procedure Code, Afghanistan, 1990.

<sup>94</sup> Max Planck Institute at 6. *Jirga* is Pashto, and *shura* is Dari for the same mechanism. They may be permanent or ad-hoc depending on the region. *Id.* See also NRC at 100.

<sup>95</sup> NRC at 102.

<sup>96</sup> NRC at 98-99

assemblies, the *Jirga* or *shura*. When a case involves a woman or relates to family matters, there is an almost exclusive preference to bring it before a *Jirga* or *shura*, because going to court is considered shameful for women.<sup>97</sup>

The *Civil Code* is silent on how the formal courts should treat the decisions of the *Jirga* or *shura* if a matter was first heard at one of those forums. The law does not specify whether matters which were handled at the *jirga* should be treated as an appeal by the formal court, whether the decisions are regarded as legitimate, whether proceedings from those forums can be used as evidence in the formal court and the like.

The *jirga* and *shura* play a central role in interpreting customary law but also may play a role in interpreting Sharia law;<sup>98</sup> they vary in their functions, rules and composition and often adapt themselves to different conditions.<sup>99</sup> Under Pashtun customary law, the members of the *jirga* are not elected or appointed, but are eager to serve and find solutions to disputes; they are often advanced in age and hold high standing in the community.<sup>100</sup> Decisions are reached by consensus and emphasize harmony in the community over individual rights; though they may also rely on past decisions to arrive at a decision.<sup>101</sup> Decisions are enforced by young male members of the tribe.<sup>102</sup> Although not religious bodies, the *jirga* may include religious leaders who base their opinions on Islamic jurisprudence.

### ***Dispute resolution mechanisms***

In the field findings, a vast majority of both men and women reported that when people have a dispute, they first go to traditional or religious leaders or people of influence. Formal courts, or other official avenues are their choice of last resort. If there is a domestic dispute, including a dispute over a woman's land rights, the first attempt to resolve the dispute is done within the family, and then, if the result is not satisfactory, it would be brought before the traditional or religious authorities.<sup>103</sup>

One man states that people prefer traditional leaders to government institutions, courts, human rights offices and the like, because traditional dispute resolution has been done that way for a long time. Traditional leaders are easily accessible and low cost. However, it is possible that traditional leaders are less accessible in the urban context. A few respondents reported that in urban areas there are no social links between people; they are from different ethnic groups so there is no council of influential people. Urban people may use more formal channels more often.

It is important to note that the assessment data did not clearly distinguish between religious and traditional leaders, and used the words interchangeably. This may have some bearing on women's property rights because Sharia law is often better for women than customary law and if the traditional leaders speak for customary law and the religious leaders for Sharia law, there may be an opportunity for improvement.

Generally, the formal courts are not trusted, require payment of a bribe, and may result in a different outcome than the traditional leaders presumably because courts are likely to result in a unilateral judgment while the *shuras* and *jirgas* focus is on conciliation. Almost all women stated that people do not

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<sup>97</sup>*Id.*

<sup>98</sup> NRC at 102

<sup>99</sup> NRC at 103

<sup>100</sup> NRC at 103

<sup>101</sup> NRC at 102.

<sup>102</sup> NRC at 103

<sup>103</sup> Interviewers (or translators) used the terms "religious leader" and "traditional leader" interchangeably in transcripts.

Landesa's interpretation is that a religious leader can be a traditional leader who is part of a *jirga* but a traditional leader does not have to be a religious leader. The usage in this report reflects the usage in the particular transcripts referenced.

approach formal courts or other offices because they require a bribe. One woman said “women don’t bring their cases to the court, but instead, they commit suicide.’ Another woman stated that taking a family dispute to the government was considered shameful.

Men agree with the women: formal courts are a last resort; they take too long for resolution, and require a bribe. Two men reported that court cases are suspended or ignored unless an illicit payment is made. One man stated that a case can take two years. Two men stated that the judges and clerical employees asked for a bribe because of their low salary.

In general, people reported that the decisions of religious and traditional leaders or people of influence are trusted. Most men praised traditional leaders and said that their decisions are respected because they have been chosen by the community, are trustworthy personalities and because they make decisions based on culture and the traditions of the community. One man disagreed, stating that traditional leaders are not always seen positively; their decisions are of a reconciliatory nature and are sometimes implemented, sometimes not. Another man stated that some people refuse the decisions made by the *jirga* or *shura* because they think traditional leaders are rooted in corruption.

The women interviewed had similar feelings about the differences between courts and traditional or religious leaders. One woman noted that traditional leaders take less time to decide a dispute than courts. Another woman stated that the decision of traditional leaders is respected because it is not just one leader who might make a bad decision – the other traditional leaders keep a check on bad decisions in a *Jirga*.

A few respondents noted that the outcomes of official courts and decisions by traditional and religious leaders are often different. Courts make decisions based on law and the Constitution, while the traditional and religious leaders apply Islamic law and standards of the community, with a focus on conciliation. One prosecutor who was interviewed stated that with traditional and religious leaders “peace takes place, rather than a judgment.”

There is a little disagreement on whether traditional leaders expect payment for their role in decision making. Overwhelmingly, women stated that there is no requirement to pay or provide gifts to the traditional leaders. Only one woman said you must pay a bribe or have a middle man. Almost all men who answered the question stated that traditional leaders do not require any gift or payment. One man said traditional leaders do not expect someone to offer them money. They serve well voluntarily because most of them are scholarly persons and declare their decisions in favor of Almighty Allah. Another man said some traditional leaders might expect a gift or money, while another man stated that bribery is required for both avenues.

### ***Procedural aspects of traditional dispute resolution***

There is general agreement amongst those interviewed about the process for resolving a dispute; however different respondents attribute different weight to Sharia law and customary law’s role in the decision. Multiple women describe the process as follows. Traditional leaders are selected by the people based on their qualifications. It is not clear from the responses whether they are a standing committee or whether a different committee each time. They hold an assembly and invite both parties. Both parties must consent to the *shura* or *jirga*. Parties agree in advance to a monetary sanction and agree to abide by the judgment or else pay the monetary sanction. Because of this, one woman says, the decision is accepted by both parties. Another woman confirms, saying that people respect the decisions of the traditional leaders because they will pay a big penalty to the affected party if they reject the decision. One woman describes the process as follows:

Both the parties give the authority of decision making to *Jirga*. *Jirga* decides that if one of the parties does something wrong after [the]

decision, then that party should pay a big penalty to the affected party, so that Jirga could prevent future disputes among the parties, as the mentioned penalty is out of the economic ability of both the parties, therefore, both the parties should accept the decision, but the response varies in court, because, court makes decision on favor of that party which paid more bribe for them.

Respondents in the field assessment appeared to be unaware of which law is applied by *jirga*. One traditional leader interviewed stated that *jirgas* “make all decisions to resolve all the issues in light of Islamic Sharia and if you name customary law or any other laws, they are your own idea and opinion.” He said that when they are resolving a land dispute, the religious leaders first conduct a fact-finding inquiry, then conduct a public meeting, after which they make a final decision. He says the leader conducts a close inquiry into the matter so that the decision will be mutually acceptable. When traditional leaders issue a judgment, both sides are asked for authorization and then a decision is made accordingly. If a party objects to the judgment, then they can approach government authorities.

An Imam interviewed stated that religious leaders apply Sharia law but also take traditional laws and customs into consideration. He says that religious and Sharia law do not contradict the constitutional laws but constitutional laws are only applied in court. Religious leaders do not carry out judgments but make reconciliation to the mutual satisfaction of both parties through an authority letter signed by both sides. In a public meeting for reconciliation, the decisions are not official. Each side can appeal for revisions. The religious leaders will consult traditional leaders and make a decision in light of Sharia law.

To resolve a dispute, traditional leaders do fact finding, conciliation, and public meetings. When a traditional leader hears a land case, people can present documents, ownership records, etc. A prosecutor states that the process involves negotiation with both the parties, and then a conciliation meeting is held through a *shura*; decisions are based on Sharia law and customary law. An appeal can be made in court or a religious leader will make inquiry into a decision made by a *jirga*. If any side raises an objection, or finds a decision inappropriate, they can take their case to the government.

### ***Evidence***

In a land case before a *jirga*, multiple people state that evidence before a traditional leader could be witness testimony, ownership documents or inheritance documents. The prosecutor interviewed confirmed that witness statements, affidavits, and other documents can also be taken into consideration. According to this respondent, witnesses can be presented in a *jirga*, however, the weight of evidence from a female witness is less than that of a male: One woman’s testimony alone is not sufficient, it takes two women witnesses to equal one male witness.

### ***Enforcement of judgments***

Another man noted that decisions of traditional leaders are enforced through mutual consent. Two mentioned that traditional leaders figure out decisions based on community culture. One man stated that whoever is found guilty will be condemned as shamefaced. One man stated that if a party refuses the decision, then the hostile parties arrange another Jirga to make up another decision. Another stated that decisions made by traditional leaders are executed because both parties have consented in advance. Courts, on the other hand, issue a unilateral verdict in favor of one side which does not hold the same sense of fairness for some respondents.

### ***Women’s access to traditional leaders***

The general perception among men and women interviewed is that women cannot approach a traditional or religious leader with a dispute on their own. The majority of women reported that they cannot access



traditional leaders directly by themselves, although a few women qualified this statement. One woman said that elderly women could approach traditional leaders. Another stated that a woman could approach them on her own if her family allowed her to. One woman stated that a literate and qualified woman could share her problems with others directly approaching the people of influence without any hindrance. However, it is unclear what makes a woman “qualified.” Another stated that women can approach the *Malik* (a religious leader) in the case of violence.

Women are generally not permitted to directly access traditional and religious leaders because it is not culturally appropriate; it’s considered shameful for women to talk with a man directly. One woman said, “women don’t refer to traditional leaders because it is not our custom...but a woman can restore her problem by her relatives.” Another confirms: “[women] can’t refer to traditional leader[s] directly because Pashtuns don’t allow their wives to go to the houses of unknown people without asking their permission. “ A Safi woman stated ‘[a woman] cannot directly approach traditional leaders because due to having Afghan society, individual women cannot directly contact men to resolve their problems.’”

Likewise, men interviewed agree generally that women cannot approach traditional leaders on their own, with some qualifications. However, male respondents had a difference of opinion on how women could approach traditional leaders, including:

- Women can approach traditional leaders directly if they have permission from their families.
- Older women can approach traditional leaders, while younger women cannot or must be accompanied by male relatives.
- Women can approach traditional leaders with a male family member.
- Women can go through female members in the household of people of influence.
- Younger women can approach traditional leaders when accompanied by older women.
- Only educated women can directly approach traditional leaders, while uneducated women must be accompanied by men.
- Women can approach religious leaders without assistance.

On the opposite side of the spectrum, one man stated “Neither institution nor *shura* is settled for women, nor they will be allowed for speech because women are properly deserved to be at home, not at any institution or local *shura* here in this community.” Another man stated “women cannot directly approach the houses of traditional leaders because we are Pashtun and disallow our women to go outside of their homes.”

A prosecutor interviewed stated that if a case before a *jirga* involves a woman, she will speak through a male family member who will attend the session on her behalf. Women can also attend if they are wearing a Hijab.

Traditional leaders and religious leaders appear to disagree with the women and men interviewed, instead stating that women can directly approach them with a dispute. One traditional leader stated that women can directly approach religious leaders at a public meeting if they are accompanied by their male relatives, like their father, brother, or son. He also noted that women wearing a hijab can directly approach religious leaders and raise their issues with them. However, it may depend on the religious leaders to determine whether the women’s direct approach is of legitimate or of an ‘illegal’ nature. In his opinion, it is not a shameful or bad act for the women to directly approach religious leaders for the restoration of their rights. Additionally, he knew of women who set the stage for meetings between

women and religious leaders who are common local women and are not affiliated to the influential people.

A *mullahimam* stated that both men and women can approach religious leaders to resolve disputes. Women are allowed to approach religious leaders either indirectly or accompanied by male relatives. If the dispute involves a woman, it is not a shameful act if the woman attends the meeting. According to this respondent, however, one single woman cannot bear witness alone by herself and must be accompanied by another woman.

### ***Land Disputes***

Many interviewees in the field study, men and women both, report that there are land disputes are common. Illustrative land disputes as described by interviewees include:

- One woman's family has a land dispute in Kunar Province. They lived for a time in Pakistan, and when they returned, their cousins had sold the land. They had a *Jirga* and a decision was made that the land should be returned to them. The cousins then plotted to kill her son so they moved away [to Jalalabad] and now they are considering returning to Pakistan.
- Another woman's husband purchased 400 sq. meters of land in Regshahmardkhan and shared it with his brother (200 sq. meters each). Her husband died, leaving her with 7 sons and 2 daughters. Now she is in a dispute with her married sons who want to sell the house, but she doesn't want to sell until all of her sons are married.
- Another woman's family has 4 acres of land in Nangarhar- Rodat District. Her husband and his brothers are in a dispute because the brothers want to sell a piece of the land to their relatives. The land was inherited from their father. Her husband wants to sell it to his own relative because "it has the dignity of honor." The brothers aren't sending them any products from the land. They had a *Jirga* but there is no decision yet.
- One man has a land dispute over agricultural land in Laghman Province. Cousins took possession when the family was living in Iran, and despite multiple *jirgas*, the dispute is still unresolved.
- Another man says he has a dispute with a woman owner over a half-acre parcel of land which was not resolved by traditional leaders and is now pending in court.
- Two men said that members of their community were in a dispute with the local government over the use of a park.
- One woman describes her family's land dispute as follows: "We have two acre land in our village which is occupied by our relative who made houses on that land for themselves and claim that it is their land. In its deed, my father-in-law's name is written, as it is inherited for us from him, but our relatives say that we will give bribe to concerned governmental officials who will not let you obtain the land, so we don't know what to do, if my sons fight for that, I scared that if one of them dies, or if they don't fight, they will not give our land. Today my sons called them for a *Jirga* in Hisari Shahi of Rodat District, but they don't come to *Jirga*, and they occupied our land by force, but if they came to *Jirga* today, we will see the result that what happens."
- One woman reported that her cousin sold his land in another province, and then afterwards, sold it again to someone else, leading to a dispute.

- One man reported that in his community a dispute erupted between 4 brothers who wanted to divide their land after their father's death. One brother refused the plot he was given and demanded another. The case went to the elders and influential people and was resolved by them.
- One woman described a conflict in her family over inheritance shares. One son was in jail and the family paid money to bail him out, and now his other brothers say he has received his share this way and shouldn't have a parcel. The conflict led to the shooting of one son by another, and she is scared that she or other sons could be killed.
- One woman reports that her family is having two conflicts. First, after her father-in-law died, they divided their agricultural land in Laghman Province. The land was divided between her husband and his 4 brothers. A dispute arose between 2 brothers over their children so the family decided to divide the house as well. Then their sister came and demanded a share of the land, but the older brother wouldn't give her share. The case went to court and the judgment was that each brother had to pay their sister 50,000 Afs.
- One woman's family is living on land that they say the government is now threatening to take back. They have "common documents" to the land, not formal or official ownership documents.

### *Women's disputes*

Women interviewed report that women are rarely involved in land related disputes because women have no authority concerning land and land disputes are handled by men. If a woman does own land, her dispute would be handled by her husband. Only one woman reported being involved directly in a land related dispute: A woman asked for her share of her family's home through her inheritance right but was denied by her brothers. She went to the elders (she doesn't say whether it's elders of the family or of the community) and her case has not been resolved yet. She said she has no idea what the constitutional law says about her issue, but knows that Almighty Allah has granted her the right to ask for her inheritance.

More generally, according to the field assessment, when a woman is involved in any kind of dispute, it is usually because she is being abused or mistreated by her husband. Women's cases might involve divorce, inheritance, violence, or "home break." Multiple women stated that women's disputes involving domestic violence may end in self-inflicted violence rather than a court case. For instance, cases of self-immolation or self-poisoning were cited. One woman says, "Women aren't concerned about divorce, because it is too shameful in our culture to receive a divorce, but they are concerned about lack of power within marriage." One woman responded to a question about cases that involve women by stating that "sometimes we are faced with cases... [of] early marriage of our daughter in order to get some amount of money from the groom's family which is a violation [in] itself." Another woman's concern with divorce was that they were entitled to an inheritance claim from their husbands but it would not be granted in a divorce.

When men were asked about women and disputes generally, respondents in the assessment provided one of two answers: either that women were never involved in disputes, or that women were only rarely involved in disputes. Men said that women are not involved in disputes, but when they are, the issues are inheritance, *mahr*, spousal maintenance, domestic violence, disputes with the neighbors, and disputes with the father-in-law. The men who claim that women had no disputes state that if there was such a dispute, it would be handled by the family, especially a women's land dispute. If that was unsuccessful, the dispute would be handled by the traditional leaders. One man stated, "women are not involved in [cases] because their men will execute their cases, women merely do housework within the household." Another man responded that women are not involved in court cases because they do not go out of their homes. One man stated that women aren't usually involved in disputes but sometimes they commit suicide when they get fed-up with their in-laws oppression and cruelty.

## 6. FIELD FINDINGS ON LAND USE AND MANAGEMENT, GENDER ROLES, AND WOMEN'S ORGANIZATIONS

This sub-section summarizes findings from the field on matters for which the law is silent but which have significant bearing on women's property rights in Afghanistan.

### *Intra-household Decision-making*

Generally, the head of household makes all decisions over spending the income of the family. This can be either the father or adult sons, if they are earning more income. When the father is deceased, the adult son makes decisions. Many respondents report that multiple generations of families live in the same household because there is a shortage of housing in the area. Some women report that they have decision-making power over spending on minor items or in certain domestic spheres. A few people stated that older women in the household can have authority over younger women in the household. There was little reported on the practice of polygamy.

For the most part, the degree to which a woman is involved in household decision making appears to depend on the nature of the marriage. Even though some women report being involved in household decision making, the head of the household always has the final say.

Men's perceptions of women's role in household decision-making are varied. Noting that the respondents are husbands or adult sons, and not all are heads of their joint households, one man stated that in some families, all members make joint decisions, while in others, it is only the head of household. Almost all respondents stated that the guardian of the household makes all decisions, but two or three say that in their household, they consult with their wives. Two respondents report the eldest son being the head of household and decision-maker. One man stated unequivocally that his wife makes decisions about the expenditures of the household.

### *Land use and gender roles*

Women consistently reported that cultural limitations on women leaving the home or participating in the public sphere, constrain their ability to use household land. For the most part, women are responsible for tasks inside the house only, while men are responsible for tasks outside the home. One woman states "women do not have freedom and authority to work outdoors." Young women especially are unable to work on land or any activity outside the home. Multiple women state that in some cases elderly women may work outside, especially on the field in rural areas. One woman states only little girls and elderly women can go outside alone. Another stated: "yes, there are social limitations for women. Because we are Pashtun, we aren't allowed to work on lands."

This restriction on movement outside of the home also impacts other social activities that women can engage in. If a young woman needs to go somewhere, she will be accompanied by a male family member, for instance, going to the doctor, tailor, hospital or a wedding party. One woman reports that girls must end school at 6-7<sup>th</sup> class for reasons of social and ethical safety. Another woman states that when she was younger, she was allowed to bring tea and lunch to her husband who was plowing their land in a rural area. The field assessment did not distinguish origin of these social limitations on women's movement outside of the home, that is, it is not clear whether they are limited to certain ethnic groups or whether there is variation between ethnic groups or whether they apply to all women. However, such limitations could have significant bearing on the practicality of whether women can use land and influence ideas of whether women *should* own land.

Men generally believe that the guardian of the household, the elder, or the land owner (typically the same person, but not always) makes decisions about land use. More than half of men interviewed state that men perform outdoor activities and women should be assigned tasks inside the home. Sometimes elderly

women allocate tasks to younger women in the home. One man said he makes decisions about land use jointly with his sons.

There may be generational, ethnic, tribal or geographical differences in the extent to which women can use agricultural land. For example, one man states that elderly women can work on the land (outside) but young women cannot. A Pashtun man stated that Pashtun women are never allowed to work on agricultural plots. One man reports that women in rural and mountainous areas can work on plots, and another confirms that women can work on land in rural areas. Another man states that neither young nor older women can work on his family's agricultural land because it is connected to their neighbor's land where men may be working. On the other hand, one man, from the Afridi ethnic group, states "I think there are no social limitations on what women can do on the land, women can work [on] the field in rural areas." Another man from the Omarzai ethnic group says that women are responsible for not only the housework, but work on the land as well. Interestingly, both of these men who agree that women can use land, do not believe that women can buy and sell land.

### ***Female-headed households***

There is some evidence that women in female-headed households are responsible for managing the resources of the household. When asked directly, women and men report that there are widow households or *de facto* female headed households (husband has migrated for work) in their communities, though a few men believe that there are none. One man states, "There is a family that has been residing in her own house since long ago. Her husband died two years ago, and now his wife is the guardian of the household. She is supporting her family and men and individuals know her well in the community." It is not clear from the field data whether these women in female headed households own land to support their households, or if not, what rights they have to land that they use.

### ***Women's Organizations***

Women's organizations are not common amongst the communities interviewed, and there are only very few women leaders, if any at all. The women interviewed did not know of any women's organizations. They say women are too busy in the home to be a part of local groups. Other women note that women are illiterate and that female leadership is disfavored.

On the other hand, several men state that there are tailoring associations and embroidery centers for women, as well as schools and clinics. Another man stated that women belong to religious circles where they study the Holy Quran and Hadith and that some women attend vocational and health councils. Of the men interviewed, only two could name a woman leader (a provincial council representative). One man stated that there are no women leaders because women have not progressed or developed enough to be leaders. Another stated "We are not in favor of women to be elected as leader since it lies in the domain of men's authority." A religious leader states that "women leadership is disallowed by Islamic law. [I]f any country has its leader a woman, it will never gain success."

### ***Immediate concerns***

Interviewees were asked what their immediate concerns were in the community. The answers differed between men and women. The most common answers from men included:

- Joblessness
- Security Situation
- Poverty

- Lack/inconsistency of electricity
- Water pumps not working (related to electricity)
- High cost of marriage

One man answered that women have different concerns, namely domestic violence by the husband and lack of enforcement of inheritance rights. The most common answers from women included:

- Poverty
- Unemployment
- Homelessness
- Lack of power in marriage negotiations
- Unable to afford dowry (dower or *mahr*)
- Land disputes
- Rising prices
- ‘The scare of injuring our husbands and sons’

# 5.0 CONCLUSIONS AND RECOMMENDATIONS

A number of broad and specific conclusions can be drawn from both the legal framework analysis and the findings from the field. At the same time, it is clear that more information is needed on certain matters that would be critical in designing interventions aimed at strengthening the property rights of women.

- 1. Convene a Women Land Rights Practitioners workshop.** The LARA Project has taken a positive step towards improving land rights for women by creating the Women's Land Rights Task-Force, a group which is comprised of influential people who can at once provide validation and guidance to the LARA project on gender-related activities, and also help move the agenda forward through advocacy and change efforts. Since improving land rights for women is challenging and complicated goal, the Task-Force will likely need assistance from others like them who have experienced the same or similar challenges and who have seen some success. It is recommended that (subject to budget availability) the LARA Project also support a conference whereby practitioners and advocates from other countries with cultural, religious or legal similarities to Afghanistan who have engaged in similar efforts come together to share comparative experiences. The workshop should be practically focused, and of a size that permits it to remain functional, and could use models developed by USAID and used to some success in similar circumstances. Other participant countries might be Kyrgyzstan, Tajikistan, Pakistan (and perhaps India), and others with international expertise, and the event could be held in Central Asia. The workshop would aim to have outputs which have direct bearing on the LARA Project's other project activities, such as awareness campaign design and messaging options.
- 2. Engage Afghan women in efforts to strengthen land rights for women.** It probably need not be stated that in a country where women's roles are largely limited to the household, engaging with women may be difficult. However, failing to include women in setting objectives and designing approaches to strengthening land rights will likely fail. One option for such engagements is in fostering women's groups (see below) and using those groups as a forum to raise awareness, provide women with choices and access to resources and support may be an effective way to embark on what will be a long road to change.
- 3. Engage Afghan men in efforts to strengthen land rights for women and raise awareness on property rights of women under Sharia law.** Likewise, in a male-dominated culture where men are the main social actors, decision-makers and controllers of resources, it is critical to also engage with Afghan men to gain support for improvement to women's property rights. The legal basis (both in civil law and in Sharia law) for women's property rights is a positive foundation upon which to engage with men on the issues. For example, this engagement might begin with identifying trusted sources of information for men in a community, and then using those sources to engage in a widespread awareness raising campaign on the religious rules around women's property rights.

4. **Understand the specific source of women's' insecure property rights and target interventions accordingly. This may mean different interventions for different ethnic groups of different geographical areas.** It is clear that among the communities interviewed, women do not own land, however, the specific reasons for this are either not clear, or may be varied, including that it is culturally prohibited, that women do not have the means to purchase land, that women do not inherit land from their family when they should. For any intervention which seeks to improve women's rights to land, which may or may not focus on "ownership," it is critical to understand the underlying rationale for that intervention to be successful in practice. For instance, if it is culturally prohibited for women to own land, then it would be important to know whether there are also cultural restrictions to women using land in that culture, and if so, do women want it to be otherwise? If women do want it to be otherwise, an intervention could focus on how to work with influential people within the community to help encourage use of land by women.
5. **Provide text of laws and verbal training on women's land rights to dispute resolution actors including religious leaders, traditional leaders, those charged with executing decisions, judges.** It is clear from this as well as other studies that the members of Afghan society who resolve disputes related to property rights for women require copies of the relevant text of and training on the *Civil Code* and Sharia law. At a minimum this would help ensure that resolution of cases will be more likely to be based on the formal law
6. **Conduct a broad awareness raising campaign on the relevant provisions of the law.** While the legal foundation for women's land rights is positive in Afghanistan, it is clear that those rights are rarely realized in practice, largely because of customary rules or social beliefs around women but also because many people do not know the laws. While not a panacea, a broad awareness campaign - that is accessible to potentially housebound women and the illiterate, as well as others - would be an important first step to making women's property rights in Afghanistan a reality. Such a campaign should begin with an assessment of the most effective means of communication to different audiences accounting for gender, ethnic, linguistic, and educational differences, and also an assessment of the most effective message which is culturally and appropriate.
7. **Encourage *mahr* as a way to ensure that women gain some land at marriage.** *Mahr* is required both by the *Civil Code* and by Sharia law. The field findings suggest that most people had at least indirect experience of land being used as *mahr*. An intervention might consider encouraging including land in *mahr* so that women gain some property at the time of marriage. This may help give her some power in the household, and may help give her more options if the marriage breaks down. This could be done by working with those who either witness or officiate marriage contract negotiations, including local religious leaders. At the same time, the practice of *walwar* while not discussed in the field assessment of this report, was identified in other studies and is prohibited by law. The same intervention could work with local religious leaders to help discourage that practice, which puts property in the hands of the bride's family but not the bride herself. Such an intervention, however, would need to strike the right balance between encouraging the *mahr* of land for women's benefit, but also being wary of the concern of the increasing unaffordability of marriage, especially amongst poorer or landless people, as this may encourage a negative perception that girls for whom *mahr* must be paid are a burden to the household.
8. **Improve the likelihood that women gain their rights to land via inheritance.** Clearly, women have the right to inherit land and other property under the Civil Code and Sharia law, however in practice, women rarely inherit. An intervention which seeks to improve the likelihood that women inherit should first understand that reasons they do not inherit in practice for each target community (it may differ for different ethnic groups or between urban and rural women, for



example). As in the case of *mahr* above, such an intervention could work with influential people locally, to help influence behavior.

9. **Expand access to women to dispute resolution mechanisms for land related disputes.** Even if women's property rights are strengthened, women are not invulnerable to being a party to a property related dispute. However, field findings suggest that women are unlikely to make use of dispute resolution mechanisms outside of the family, which could affect the likelihood that she will prevail especially if it is against a male family member. An intervention may consider how to best ensure women have access to the same dispute resolutions that men access in property related disputes. Such an intervention, as those above, would need to begin with traditional and religious leaders who would resolve the disputes in question, but may involve the use of sanctioned female (or other male) intermediaries in dispute resolution forums.
10. **Explore and encourage socially acceptable ways for women to meet and organize.** For any intervention to be successful it must as basic minimum be seeking the kind of change that women themselves seek. However, reaching women in Afghanistan may be difficult because of cultural or social prohibitions to their engaging in the public sphere. The field findings suggest that while women do not normally interact with other women in groups, some men believe that they do.<sup>104</sup> Also, there is evidence of women's councils in Afghanistan, as well as the Festival of Samankak, a yearly tradition where women prepare a delicacy, *samankak*, and also an opportunity for women to work, share stories, provide comfort and socialize. There may be room for an intervention help identify the types of group interactions for women which men would support and that women could attend, and then use those groups to share important on women on property rights, and also to identify feasible options for asserting property rights, and could be based on the Self Help Group model used successfully in India.
11. **Gain more nuanced understanding on the underlying sources and explanation of women's weak property rights.** The field assessment findings in this report are an important first step in gaining a realistic picture of the property rights of women in Afghanistan. However, more information is needed, particularly for other parts of the country. In addition, a few additional areas of inquiry would help ensure that any proposed interventions are feasible in practice. Among these:
  - a. Are there ethnic or tribal differences in customary laws around women's ownership of, transactions in, and inheritance of land?
  - b. What is the relationship, if any, between women's property rights and the fact that many households are multi-family, multi-generational, and/or polygamous?
  - c. How common is the practice of *walwar* (bride price) and does that have a bearing on the likelihood that a woman will inherit land from her natal family?
  - d. What are the customary laws around use of agricultural or home plot land by women? Do they differ between ethnic groups? If there are restrictions on certain land uses by women, how can women benefit from the benefits of secure land rights while also complying with customary laws?

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<sup>104</sup>Wahid Omar, *Don't Say What, Who, and When, Say How* in Jennifer Heath and Ashraf Zahedi (eds), *Land of the Unconquerable: The Lives of Contemporary Afghan Women*, University of California Press, 2011, pp 94-5.

- e. How common are female headed households? Do the customary rules around ownership, use and control of land change for women household heads? If so, what can be learned for other women? Is this different between ethnic groups?
- f. Are widows widely expected to re-marry within their husband's family? If so, does that have some bearing on women's property rights?

## **12. Specific recommendations based on the LARA Project work plan dated December 2011.**

As a starting place, the LARA Project might consider adding indicators which show the degree to which gender sensitive actions have been incorporated into each project sub-activity. The Task-Force and Advocacy Coalition called for in Activity 2.1.5.2 (or other relevant specialists) should play a review role in reviewing procedures, rules and guidelines produced for all LARA Project activities. In addition, the work plan might specifically provide for the following:

- a. Any assessments related to urban planning, formalization, legal reform, dispute resolution should be gender disaggregated. Assessment teams should be composed of males and females to the extent possible, all teams should be trained on gender sensitive assessment protocols, and assessment frameworks or questionnaires should cover.
- b. Any plans, procedures, rules and guidelines developed for urban planning, formalization of informal settlements, legal clinics, and land related dispute resolution should ensure they are understood for their potential different impact on women and men, and should take specific steps to ensure accessibility for women and men, even if for women this accessibility is by proxy or via a women's organization.
- c. Those involved in formalizing informal settlements, should be aware of the implications of the Sharia law and Civil law governing women's property rights, including *mahr* and inheritance, and those rights should be incorporated into formalization procedures and awareness raising activities.
- d. To avoid decisions being made based on customary law, which is less favorable for women, anyone who is involved in dispute resolution – from the lowest to highest levels, *jirga*, *shura*, people of influence, and judges – must be trained on Afghan Law (including the Civil law and the relevant Sharia principles) provisions for women's property rights at marriage, as a widow, at separation or divorce, and as a daughter, as well as prohibitions against payment of *walwar* or bride price. This could be piloted in Jalalabad, the LARA Project focus area, but might be considered a model for other areas in the country.
- e. All LARA Project staff should be trained on gender sensitive practices, and Afghan Law (including the Civil law and the relevant Sharia principles) for women's property rights *in addition to* having a gender specialist on staff.

Ultimately, improving women's property rights will require the kind of behavioral change which could take many years; any intervention must keep a mid-and long- range view in mind, and must be holistic in its focus. It is abundantly clear that change for women in Afghanistan will require support from the whole community, and especially those people who yield local influence. The LARA Project provides a window of opportunity to help strengthen land rights for women in practice, by capitalizing on the very positive legal foundation for women's land rights in Afghanistan. These foundations of strong property rights for women exist in both the Civil Code and in Sharia law, and afford an important opportunity for change in women's lives.

# APPENDIX A. ASSESSMENT FRAMEWORK

## **LARA Project Gender Assessment Framework**

ARD/Tetra Tech by Landesa (Scalise), July, 14 2011

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### **Purpose**

This assessment is intended to identify the formal, informal and religious legal and regulatory framework for women's property rights and to identify points of entry for reform and/or interventions which are feasible, within the LARA Project's overall scope, and workable in the given social, legal and political environment. All recommendations will be validated in the field. The assessment will also identify local champions, where appropriate, for any recommended interventions, and potential partners or collaborators in follow-on activities. The final assessment will be accompanied by a desk-review of the legal and regulatory framework for women's land and property rights in Afghanistan.

This framework is intended to guide those conducting the assessment in their activities, to ensure consistent approach across regions and to ensure a thorough analysis of the situation and to permit pragmatic recommendations.

This framework will begin with suggestions for methodology of the assessment. It will be followed by substantive areas of inquiry and suggested lines of questioning, and end with next steps which outline how Landesa and those conducting the assessment will communicate and divide responsibilities throughout the process.

### **Recommendations for methodology**

Please also review Annex One: Further Guidelines on Methodology.

The assessment should be comprised of focus group interviews, semi-structured interviews, and key informant interviews. Interviewees/focus group participants should be male and female (1/2 each is optimal), but males and females should be interviewed separately. If possible, speak to different members of the same household (for instance, a first wife and a second wife, a mother-in-law and daughter in law), but consider power dynamics which may suggest individual interviews, without the presence of other household members, for each. Key informants can be those with some access to or influence within the community, e.g. teachers, mullahs, health workers, etc.

If possible, conduct multiple focus groups/interviews in each community (to validate answers).

#### *Focus Groups*

Attention should be paid to power dynamics that may be under the surface in a focus group, particularly with attention paid to the age, wealth, status and ethnicity of participants (to the extent that those or other characteristics might influence a participant's social permission to speak, or to speak without worrying of causing offense or putting themselves in danger).

### *Research Team*

Where possible the research team should reflect the people who are being interviewed, but should not be known in the communities in question. Thus their ethnicity/group affiliation should be the same as respondents; males should interview males, and females should interview females. If at all possible, have at least two research teams working at any one time, this will permit time to first establish trust with respondents. Additionally, try not to link researchers to a local NGO as this may cause an expectation of assistance.

### *Process*

Field notes should be taken verbatim, not summarized. All discussions during the focus group session should be documented, even statements that may seem off topic. Translation of technical and/or culturally specific terms should be agreed upon in advance by all assessors. Where a term does not have a direct English/other language translation, explain its meaning as best you can.

To be able to respond to themes or issues identified in the field, transcripts will be shared between researchers and with Landesa where appropriate, and preliminary analysis will be conducted. This will help tailor future questioning and help identify where insufficient or new/unexpected themes emerge. It may also help with distinguishing between regional differences in norms and styles of communication.

Record specifics of methodology including number of people interviewed, “categories” of people, status, gender, ethnic background etc. Also record the time at the beginning and the end of the interview.

Interviews should be held a time of day that is convenient, especially for women who have other household tasks.

### **Recommended process for support from Landesa**

Once local partners have been selected and vetted by the LARA Project team, Landesa and local partners who are conducting the assessment will meet (via skype or telephone if possible). In that meeting the following will be discussed:

1. Line of questioning will be clarified and contextualized
2. Planning for the assessment which might require Landesa input
3. The roles and responsibilities for Landesa, the LARA Project team, and local partners in assessment, in report development etc.
4. Expectations on outputs and timing constraints
5. Approach in the field, e.g. how will recommendations be vetted with community?
6. Approach to support which Landesa can provide during the assessment

The following annexes provide a framework for the gender assessment, including illustrative questions and methodological considerations. The final annex provides an overview of the possible outline final report to help show assessors how the information which they collect might be used.

# APPENDIX B. ILLUSTRATIVE QUESTIONNAIRE

The illustrative questionnaire presented below presents a wide range of questions and issues pertaining to women's rights to land and natural resources that could be considered in this gender assessment on land administration projects. It is designed for conducting qualitative fieldwork on women's/intra household rights to land, their perceptions on land and the law, other people's perceptions of land and the law, access to and use of dispute resolution related to land, and other practices or beliefs which might impact women's rights to land and/or have some bearing on realistic options for interventions/project recommendations on these matters. The questionnaire should be reviewed alongside Annex Two: High Level Assessment Report Outline so that the ultimate product can be kept in mind.

A note on terminology: A number of questions use terms which are intentionally vague (for instance, "traditional leader" instead of "mullah"). This is because those terms may have different meanings in different contexts; it is important to establish their meaning in the community that is being assessed early on, and then use those definitions in the assessment.

The model questionnaire below is highly detailed, capturing a variety of topics/sub-themes, and highlighting as many relevant issues as possible. The objective of this comprehensive list of questions is to provide analysts a range of sub-themes to consider when collecting information on women's land rights. The questionnaire in its entirety will not necessarily be appropriate in all contexts, and should be used as guide for further discussion between the assessors, Landesa and others, so that it can be refined for the local context.

## General Background Questions.

These can be used with key informants, local NGOs, local authorities, or local women and men. The purpose is to get a picture of the land related matters in the community where the assessment is being conducted.

- How many households are there in this village? What does a household mean in this village?
- Is the village made up of recent returnees? If so, when did they return?
- Are there IDPS in this village? If so, where are they from originally?
- What is the main source of income for people in this village?
- Are most people settled farmers? Nomadic? Semi-nomadic?
- What language is spoken here?
- What percentage of the village "owns" agricultural land? What is the average size of the landholding?
- What does "ownership" mean in this village?

- What percentage of land in the area is leased? Do these involve long-term or short-term (define) use rights?
- How many households are landless? How many are sharecroppers? How many have mortgaged land?
- Is there communal land in this village? If so, how is it used? How many households are headed by women? Is there any increase in the number of female-headed households over the past 5 or 10 years?
- How many households are headed by men under the age of 16, very elderly men, or absent men (i.e. men who have migrated for work)?
- How many households are polygamous? Is polygamy publicly acceptable in your village?
- How many households are multi-generational?
- How many households in the village do you consider to be wealthy? What does it mean to be wealthy in this community?
- How many households in the village do you consider to be poor? What does it mean to be poor in this community?
- Are women from the village involved in any form of local groups?
- Who would you identify as a leader among women in the village? What makes her a leader? Who would you identify as a leader among men in the village? What makes him a leader?
- What types of issues are people in this community concerned about? Is that concern the same for men and women?
- Do you ever hear of any complaints regarding land? (e.g. not enough land, dispute over land, etc.)
- Where do people go if they want help with mediating a family dispute?
- What are traditional leaders (e.g. mullahs) responsible for? Do they engage in dispute resolution?
- Who are the traditional leaders in the community? How are traditional leaders appointed/elected? Are they formal or informal?
- Do any of the answers to the above questions change based on ethnic, religious or tribal affiliation?

Questions for traditional leaders/local authorities/mullahs.

These questions are directed specifically at traditional leaders, local authorities, or influential people in the community. The purpose is to get their perspective on gender and land related matters in the community and to understand what role they play in land related matters.

- Who are the traditional leaders/local authorities/people of influence in this community (village, peri-urban, urban areas)?

- What are the roles of the traditional leaders related to land? (e.g., land allocations, control of land uses, dispute resolution related to land, other?)
- What types of land ownership is present in this community (agricultural, pastoral, state land, private land, clan land)?
- Has there been land redistribution in this village? If so, describe.
- Do many people in this village have land related papers or documents such as title, deed or certificate?
- Who else is involved in land administration, allocation, and land dispute resolution in the area? (If there is another entity or individual, ask all questions to that entity also)
- Do women and men both go to traditional leaders for assistance with issues and problems? Why/why not? What is the most common type of problem that traditional leaders hear?
- If so, what types of issues and problems do women bring to the traditional leaders?
- How is this assistance sought? What is the process (esp. for dispute resolution)?
- Do women approach the traditional leaders directly, through family members, or through others?
- Are there specific women in the village who help rural women approach the traditional leaders (such as wives of the leaders, NGO members, community activists)?
- Is it culturally appropriate for women to approach the traditional leaders?
- Do traditional leaders resolve issues and disputes relating to land? If so, what types of issues and disputes?
- What sources do traditional leaders consult to resolve issues relating to land? Customary law? Formal law? Sharia law? Other religious law? Village practice? Other?
- If they refer to formal law, what is their source for the law? Written? Verbal advice? Is it the same for customary law? Religious law?
- Do traditional leaders apply different laws or rules depending on the category of land; e.g. ancestral, clan, purchased, leased, pastoral, mortgaged, state, private etc.?
- What methods of dispute resolution do traditional leaders use in resolving land disputes (e.g., fact-finding, conciliation, negotiation, public meetings, adjudication)?
- If the dispute involves a woman, is the woman present when the decisions are made in a dispute?
- What are the ways in which people bring evidence to the traditional leader in a land case (e.g., documents? Witness statements? Affidavits? Site visits?) Is evidence from women accepted on the same terms as evidence from men?
- How is judgment rendered? Is the judgment enforced? If no, why? If yes, how is the judgment enforced? Any examples of land related cases which when was not enforced?

- Can a party appeal the ruling of the traditional leader? If so, to what forum? Does the traditional leader play a role in the appeal process? What law is applied in the appeal process? (Customary? Religious? Formal?)

Questions for individual women or women's groups, individual men or men's groups

#### General/background

- Who are members of your household? (children, parents, parents-in-law, other relatives)? If children, what ages? What is your household's main source of income/livelihood?
- Does your household have access to land?
- Does your household "own" that land? What does ownership mean to you?
- Do you lease that land? Other?
- Is there any formal or informal documentary evidence of the land rights (use, access, lease) of the household, such as a title, deed, lease or certificate? If so, in whose name? Who keeps it? Where is it?
- What types of land does your household own or lease or otherwise use (agricultural, residential, pastoral, state land, private land, clan land)? What is the size of the plots?
- What was the source of each landholding (e.g., Was it inherited? By whom? Was it purchased? By whom?) When did the household obtain the land?
- What are the household's sources of food, income? Who is engaged in employment? How often? (Seasonal? Sporadic? Year-round?) At what wage rates?
- Who decides how to use any income earned by the household? How is the income used?
- What do you do in a typical day? (walk through this—encourage information about activities within the home and outside of the home. Use time clock to help set this up.)
- What types of farming activities are you responsible for? (spring, summer, fall, winter).
- Do you do any of your chores with groups of other women?
- Do women in the village cooperate (help each other) with some responsibilities?
- Do women within the extended household work together? What are some examples of this?
- What farm and household activities is your husband (or other men in the household) responsible for?
- Who makes decisions on what activities the household undertakes (e.g., farming, livestock rearing)? Who decides what crops to grow, what livestock to raise, and what to sell?
- What is the quality of life of your household?
- Would you say your quality of life has gotten better or worse in the last 5 years? Why?



- Do you know of women in this region who are the head of their household? How many?
- Has there been any increase or decrease in the number of women who are heads of household?
- Do the responses vary by area (rural, peri-urban versus urban areas)?
- Do the responses vary for different religious, ethnic or tribal groups? Do the responses vary for other disadvantaged groups? Do the responses vary depending upon the wealth of the in-laws or birth family?

#### House Plot (land surrounding the residential home or compound)

- What is the size of the house plot? (If small – just the footprint of the house – there may be no other uses of the land and these questions can be skipped)
- When did you begin to occupy the house and plot? What was the source of the plot (gift at marriage, inherited, purchased, moved to this household when married, etc.)
- Who owns the plot? How do you know? Were documents ever issued (such as a title) for this plot? Have you seen it? Is your name on it? Whose name is on it?
- In the context of a marriage, do the man and woman have concept of individual ownership to particular plots of land?
- In addition to a residence, how do you/household use the house plot (garden, livestock, home-based business)?
- Who decides how the plot would be used?
- Has the household made any improvement on the plot? If so what were the improvements and who made them?
- If the plot includes a garden, who decides what to grow? Is the garden used for subsistence need, to generate income, or both? What is grown?
- What are your responsibilities on the house plot? What are your husband and children's responsibilities on the house plot? What are the responsibilities of other males or females in the household?
- Are there social limitations on what women can do on the house plot? Do those limitations change with age and status of the woman?
- Do people buy and sell house plots in the area?
- What does a house plot cost on average?
- Do the responses vary by area (rural, peri-urban versus urban areas)?
- Do the responses vary for different religious, ethnic or tribal groups? Do the responses vary depending upon the wealth of the in-laws or birth family?

#### Field Plots (including agricultural land)

- How many field plots does the household have? What size?

- When did the household obtain the plot(s)? What was the source of the plot (received at marriage, inherited, purchased, etc.)
- Who owns the plot(s)? How do you know? Were documents issued? Whose names are on listed on those documents?
- Who decides how the plot will be used?
- How is the plot(s) used? If crops, is it for subsistence or sale?
- Has the household made any improvement on the plot? If so what improvements? And by whom were the improvements made?
- Who decides what crops should be planted on the field plot(s)?
- Who works on the field plot(s)? (% for various household members and tasks, outside labor)
- Who sells the crops? Who controls the income earned from the plot?
- Are there social limitations on what women can do on the field plot? Do those limitations change with age and status of the woman in the household?
- Does your household make use of pastures? Who owns the pastures? Who in the household uses them?
- Do the responses vary by area (rural, peri-urban versus urban areas)?
- Do the responses vary for different religious, ethnic or tribal groups? Do the responses vary depending upon the wealth of the in-laws or birth family?

#### Land Transfers

- Has your household ever sold or leased-out any land?
- Has your household ever purchased or leased-in any land?
- If yes, who owned the land that was transferred?
- Who was involved in the decision to lease, buy, or sell? Were you involved in the decision? Why/why not?
- Is clan land or family land treated differently than land which was purchased by fathers? By husbands? By the courts? By the local dispute resolution bodies?
- Did the transaction involve any written documents?
- Was your signature required on any document to lease, sell, or buy land?
- If you were to sell or lease out land, would your signature be required?
- Do household heads have to provide proof of permission to sell household land? Do they need to consent from anyone else in the household? If so, from whom?

- Is it culturally acceptable for women to purchase or lease land if they are married? Is it common for women to purchase or lease land? How many women in the village have bought land, individually or jointly with their husbands? How many have leased land?
- How do women generally pay for the purchase or lease of land (e.g. savings, loan)?
- If a woman can obtain credit to purchase or lease land, from whom does she get it? (e.g., employer, family, money lender, bank)
- What are the difficulties that women might have in purchasing or leasing land?
- Does your household have any land which has been mortgaged? If so, from whom? Why? How is the loan repaid? Who in the household makes this decision?
- Has there ever been land redistribution in your area (government sponsored)? If yes, which households received land in that redistribution? Did your household? What types of land was distributed? Were documents issued?
- Do the responses vary by area (rural, peri-urban versus urban areas)?
- Do the responses vary for different religious, ethnic or tribal groups? Do the responses vary depending upon the wealth of the in-laws or birth family?

#### Access to Information, including Extension Services

- Do women know their rights to property under religious law? Under formal law? Under customary law? If so, what are they? Do you know your rights? Do men know their rights?
- How do women in the area (village, peri-urban or urban) receive information about land issues, new land programs (or information about other important changes or events)? Is the answer different for men and women? Do women and men receive information in different ways? What are they different ways?
- (If answered that women do not receive much information): Would it be helpful to you to receive more information? Do you have any ideas for how this could be done?
- Are extension services available in this village? Do you ever receive extension services? If not, who does?
- Do the responses vary by area (rural, peri-urban versus urban areas)?
- Do the responses vary for different religious, ethnic or tribal groups? Do the responses vary for other disadvantaged groups? Do the responses vary depending upon the wealth of the in-laws or birth family?

#### Marriage

- Do women usually marry men from their village or men from another village? Do they marry people from their extended family?
- When a woman and a man get married, where do they live? (Does the woman traditionally move to her husband's household or vice-versa?)

- Are marriages generally formalized? Why or why not? What constitutes a legal marriage?
- Is dowry paid by the bride's family (to the groom's family)? If so, what are average dowry payments/items? Who controls the dowry once received (e.g., in-laws, husband, wife?). Why is dowry paid?
- Is bride price paid by the groom's family to the bride's family? How much is paid?
- Is bride exchange common?
- In addition to any dowry/bride price, does a woman typically bring anything with to her new household? Land, money, gold, etc.?
- If so, does what she bring belong to her throughout her marriage?
- How do newly married couples receive land, house and property? Is it at the time of marriage/before marriage/with the first born child?
- Do women have their own plots? Do husbands and wives own land together? Do husbands and wives use land together? Why/Why not?
- Do husbands and wives make decisions regarding assets, use of income, planning for the future, children, etc. together? Or does one spouse control all those decisions? If so, who and why?
- Does women's access to or control of land vary depending upon the wealth of the in-laws and birth family? Or on their age? Their marital status? Their status within the household (e.g. first wife over second wife)
- Can women purchase land in their own name if they are married? Do they require male consent to purchase land register land? Can women register land?
- Do the responses vary by area (rural, peri-urban versus urban areas)?
- Do the responses vary for different religious, ethnic or tribal groups? Do the responses vary for other disadvantaged groups? Do the responses vary depending upon the wealth of the in-laws or birth family?

#### Divorce, Separation, and Abandonment

- Does divorce ever happen in this village? If so, how many women in your village are divorced? What are common reasons for divorce? Are divorces formalized? If so, how so?
- Do separations ever happen in this village? If so, how many women in your village are separated?
- Are women sometimes abandoned by their husbands? If so, how many women in your village are abandoned? What are common reasons for abandonment?
- Are women permitted to initiate a divorce?

- If there is a divorce, does the wife receive any of the household property? Land, including purchased land? House? Livestock? Does she receive any right to the house itself or the household plot?
- Is there a stigma to divorce? Are there acceptable reasons for divorce? Can divorced women re-marry? If so, are their rules on who they can marry? Who? Why?
- What happens when there is a divorce? What if she is not able to return to the birth family?
- If there is a divorce, does the woman usually return to her parent's household? If the wife leaves her husband's household, does she take the children with her?
- Upon divorce, who cares for the children? If the woman cares for the children, does the father typically provide financial support?
- How do the responses vary in cases of separation and abandonment?
- If a woman is abandoned by her husband and she does not know whether he is alive or dead or where he is, does she have any right to make decisions about the land that her household has? Can she farm the land? Can she sell it? If so, does she do this herself or use a proxy?
- Do the responses vary by area (rural, peri-urban versus urban areas)?
- Do the responses vary for different religious, ethnic or tribal groups? Do the responses vary for other disadvantaged groups? Do the responses vary depending upon the wealth of the in-laws or birth family?

### Polygamy

- Is polygamy permitted in this community? Are there any polygamous families in the area (village, peri-urban, urban)? How many?
- Is polygamy legal under formal law? Religious law? Customary law?
- If there is more than one wife living in the same household, are the wives generally treated equally in terms of their rights to property and household income?
- If a man takes a second or third wife, what happens to the way that land is managed in the household when a new wife is added? (E.g. if the first wife was permitted to use some land, does she have to give up some of that land for the new wife?)
- What are consequences for the first wife related to the land? Does she receive any land or other livelihood security? What are consequences for the other wives?
- What are the consequences for the children of the first or subsequent wife in terms of later inheritance of land?
- What happens during land transfer? Are all wives involved in decision making? Is everyone's permission required? Is permission required of adult children? If so, which wife's children?
- Do the responses vary by area (rural, peri-urban versus urban areas)?

- Do the responses vary for different religious, ethnic or tribal groups? Do the responses vary for other disadvantaged groups? Do the responses vary depending upon the wealth of the in-laws or birth family?

#### Inheritance (Daughters/Widows)

- Do you know what the laws are in regards to inheritance? Do you know the law for inheritance of land and livestock? Do you the law for inheritance of wives? Daughters (Ask for formal law, religious law)? If so, what is it?
- In every day village life, which of these laws followed?
- Is there someone in the family who is customarily regarded as the heir to land? Is this practice generally followed in the village? Have these customs changed over time? If so how/why? Does it change with the type of land?
- Do households discuss plans for inheritance? Is this a discussion that includes all people in the household, e.g. all adult men and women? If not, who? Are clan or other extended family involved? If so who/how? Does this answer differ for different types of land?
- Are wishes of parents regarding inheritance witnessed by a traditional leader or otherwise memorialized?
- How often do women inherit land? How many women in the village inherited land? Do women inherit non-land property?
- Under what circumstance do women inherit land or non-land property (in relation to brother or male relatives)? Are the sizes and quality of plots inherited by women/girls different from plots received by brothers?
- Do married daughters have the same rights as unmarried daughters to inherit from their birth family? Do married sons?
- If daughters had already inherited land from their birth families before they are married, what happens to her share of that land when she gets married? (Is this different if she leaves village or stays in it?)
- If only one child receives the family land through inheritance, what do the other children customarily receive?
- When the head of the household dies, who customarily becomes the next head of the household?
- Is this transfer to a new head of household made formally/ registered anywhere?
- What happens when a woman is widowed? Does she have access to land (house plot? Field plot?)? Is it typically of adequate size and quality? If not, how does she care for her family? Does this answer change on her age and status within the household?
- What rights do widows have over this land? Are widows generally allowed to make independent decisions on the land or do they have to require their sons, brothers, etc. approval? Can they transfer or lease the land?

- Are different types of land treated differently? E.g. clan land? Purchased land? Leased rights? Pastoral land?
- Are widow's rights the same whether she has children or not?
- How are elderly widow's rights different from those of a younger widow?
- Are a widow's access to and control of resources different depending upon the wealth of the in-laws and birth family?
- Are widows permitted to remarry? Are widows obligated to marry a brother or close relative if her husband dies?
- What happens if she refuses?
- Are widows allowed to remarry outside of the deceased husband's family?
- Are there any widows in this village who remained unmarried?
- Other than land, what options might a widow have to take care of her family?
- What if the husband has several wives? Who (which wife) gets access to land? Which wife's children inherit land?
- Who has responsibility to take care of the parents upon their death? Is this the responsibility of men or women?
- Do the responses vary for different religious, ethnic or tribal groups? Do the responses vary for other disadvantaged groups? Do the responses vary depending upon the wealth of the in-laws or birth family?
- Do the responses vary by area (rural, peri-urban versus urban areas)?

#### Participation in Community, Governance, and Dispute Resolution Systems

- To whom do you first go to if you have a dispute related to land? Family members? Other women? Traditional leaders? If that fails, who do you next go to?
- Do people have trust in the traditional leader's ability to resolve disputes? Do people believe the traditional leader is fair? Do you believe the tradition leader is fair? Why? Why not?
- Is there a formal system of dispute resolution also in place in this community? What is it? Do people use it? Do you ever use it? If yes, how and for what kinds of issues? When do you use it?
- If a dispute has gone to a tradition leader, is his decision enforced? If not, why not? If so, how? If there is a formal court in this community, are these answers the same or different? Why?
- Can women approach the traditional leaders directly for help with an issue or dispute? Why? Why not? If not, how do they handle this?
- What is the process for initiating action related to land with a traditional leader? Do documents have to be filed? Do meetings have to be called; if so by whom? If so, are

their costs associated with that? Who bears those costs? If there are local courts, are the answers the same?

- Is access to the traditional leaders conditioned upon a gift or payment? If there is a formal court, is the answer the same?
- What role if any do the traditional leaders play in terms of distribution of land? Do they have the authority to distribute rights related to land and natural resource rights (use, transfer and to individuals or groups)? Are any women involved in distribution of rights? Are those rights formalized?
- In your village, are there any female traditional leaders? Are there any female judges?
- Are women in your village meaningfully involved in dispute resolution—either as mediators or as participants? Formally or informally?
- Do women have a voice in local governance/village council? Are they trained to serve on the village council? Are they connected to local leaders?
- Do women in your village vote? For local and national elections?

Are there general community meetings? Do women attend them? Does the answer depend on a woman's age or status within the household? Do you attend them?

- Are there any "groups" in the village (e.g., seed-buying groups, livestock cooperative groups)? Do women participate in these groups?
- Do the responses vary by area (rural, peri-urban versus urban areas)?
- Do the responses vary for different religious, ethnic or tribal groups? Do the responses vary for other disadvantaged groups? Do the responses vary depending upon the wealth of the in-laws or birth family?

#### Final Questions/ Impressions

- What issues are you most concerned about? (Are issues of divorce, widows, lack of power within marriage, polygamy critical concerns for women?)
- What are you most concerned about in terms of dispute resolution? (e.g. literacy, access to legal aid?)
- What are women most concerned about in terms of enforcement of laws (customary or formal)?
- How do you feel about the inheritance practices? How do you feel about inheritance laws?
- What would make life easier for a woman in this village?
- What do you hope for your children? Sons? Daughters?
- If you had more money, what would you do with it?
- Do the responses vary by area (rural, peri-urban versus urban areas)?



- Do the responses vary for different religious, ethnic or tribal groups? Do the responses vary for other disadvantaged groups? Do the responses vary depending upon the wealth of the in-laws or birth family?

Questions for formal dispute resolution actors, or those working on legal aid, or with local NGOs and the “huqook” who is responsible for dispute resolution and registering informal decisions.

- How important is land to the people in this community? Why?
- What percentage of cases that you hear involve land? What are the most common land related disputes?
- What is the average amount of time for the case from filing to judgment?
- What are the average court fees for a civil case? Are fees higher or lower for cases involving land rights? Are these fees affordable for most people?
- Do litigants have to be represented by a lawyer? If so, what are average lawyers’ fees?
- Is legal aid available for disadvantaged litigants? If so, how does a party obtain legal aid services? Who is eligible? Are there costs to legal aid or are the eservices free?
- Are litigants required to be literate?
- What language is used by the court? Are translators available?
- Is there an automatic right of appeal? What percentage of land cases are appealed? How long does the appeals process last? What are the costs of an appeal?
- What percentage of litigants at the trial court level are female? What percentage of litigants are women from rural areas? What percentages at the appellate level?
- Do cases often involve women? What are the most common cases that women bring to court? What is the frequency of these cases?
- Do women usually seek assistance of others in accessing formal courts? If so, who do they usually ask for assistance?
- What makes women’s access to formal courts difficult (or easy)?
- Does the court have alternative dispute resolution procedures (“ADR”) like mediation, arbitration, and negotiated settlement? Are those procedures mandatory in certain cases? If so, what cases?
- Can parties voluntarily agree to engage in ADR? How long do ADR procedures take? Are lawyers required? What are the costs in comparison to formal litigation?
- What other mechanisms do women use to resolve conflicts/disputes, esp. over land and property?
- Are decisions made in court enforced? If so how?
- What evidence is used in a case related to land? Is it written/verbal?

- Are people familiar with the formal law? Does this answer differ for men and women? Does it differ for women of different education? Background? Status in the household? Age?
- Does the court apply formal law? Religious law? Customary law? How does it make that decision? Is it consistent by all judges? By all forums?
- Does the formal law have different rules for different categories of land, for example, ancestral versus purchased land; or state land versus private land?
- What does the law say about inheritance by women as daughters/wives? What does it say about polygamy? What does it say about property as it relates to widowhood, divorce, separation, abandonment?
- Note any rural/urban, religious, ethnic, or tribal differences, and variations in responses from other disadvantaged groups particularly in relation to access to courts, types of cases brought in, if seeking assistance in accessing formal courts, other mechanisms for resolving conflicts/disputes over land and property, and familiarity with the formal law.

# APPENDIX C. FURTHER CONSIDERATIONS ON METHODOLOGY

Further Considerations on Methodology			
Considerations	Options	Challenges	Comments
Categories of people for interviews	<ul style="list-style-type: none"> <li>• Community leaders (traditional and official)</li> <li>• Women only (groups and individual)</li> <li>• Men only (groups and individual)</li> <li>• Married couples</li> <li>• Households</li> </ul>	<ul style="list-style-type: none"> <li>• The greater variety of people interviewed, the better the understanding of the issues will be.</li> <li>• Although often interviews are with men only groups by default, these groups are infrequently asked questions about intra-household relationships. Getting the perspective of men as well as women on these relationships is very valuable.</li> </ul>	<ul style="list-style-type: none"> <li>• Interviewing women (non-officials) about women's land rights should be the highest priority.</li> </ul>
Categories of women for interviews	<ul style="list-style-type: none"> <li>• Consider interviewing women of different marital status (single adult women, women in polygamous relationships, widows, separated/divorced, those with and without children)</li> <li>• Consider interviewing older as well as younger women (married</li> </ul>	<ul style="list-style-type: none"> <li>• Interviewing women of different marital status is critical, because women's access to land rights can be dependent on marital status.</li> <li>• Separate sub-groups may be formed as some women may not be comfortable talking about their specific experience within mixed ethnic or religious groups.</li> <li>• Young women may feel hesitant speaking in front of their elders, or</li> </ul>	<ul style="list-style-type: none"> <li>• One option may be to ask women being interviewed to identify specific women of various circumstances (e.g., widows, divorcees, women holding leadership positions, women in polygamous relationships, women farming certain types of land, etc.) in the village or nearby villages.</li> <li>• It may be necessary</li> </ul>

Further Considerations on Methodology			
Considerations	Options	Challenges	Comments
	and unmarried) <ul style="list-style-type: none"> <li>Consider interviewing women of varying ethnic and religious backgrounds</li> <li>Consider interviewing women living in different geographical situations (mountains, valleys, highlands, lowland, coastal, internal, etc.)</li> <li>Consider interviewing women in rural and urban areas</li> <li>Consider the implications of interviewing these different groups together and separately.</li> </ul>	rural women may feel inferior to urban women. <ul style="list-style-type: none"> <li>Interviewing first and co-wives in the same group may or may not be problematic</li> <li>Interviewing subgroups separately may be challenging because of time constraints.</li> <li>Women of lower caste or economic/social stature or those not born in the village may not participate in meetings where women of higher caste or stature are present, and separate meetings (or individual interviews) may be required.</li> <li>It may be difficult to discern ethnic or religious background if communities and villages are mixed, or if ethnicity or religion are sensitive issues because of recent conflict.</li> </ul>	to specify the need to interview active women and women who are not actively engaged in NGOS or other community activities.
Interviews with men and local leaders	<ul style="list-style-type: none"> <li>Consider interviewing men, either individually or in groups</li> <li>Consider interviewing local leaders, traditional and official (most of whom are likely to be men)</li> </ul>	<ul style="list-style-type: none"> <li>The more perspectives collected on an issue, the greater the potential understanding of the issue.</li> <li>Local leaders may have more power in terms of land rights than official leaders.</li> <li>Local leaders and official leaders may see women's land rights very differently.</li> <li>Hearing men's views of women's land rights is an important aspect of a balanced understanding of the issues.</li> </ul>	<ul style="list-style-type: none"> <li>Ask women in the community which men in the community are the best to speak to about these issues.</li> <li>Use meetings with men to identify individuals who are potential champions of women's rights within the community (i.e., those who are open and interested in the topics, have status in the community). NGOs and others can</li> </ul>

Further Considerations on Methodology			
Considerations	Options	Challenges	Comments
			use these individuals to help create and implement action plans on women's issues.
Scheduling meetings with women	<ul style="list-style-type: none"> <li>• Time of day should be selected based on women's availability</li> <li>• Individuals versus groups</li> <li>• Size of groups</li> <li>• Location of meetings</li> </ul>	<ul style="list-style-type: none"> <li>• Sometimes women are more willing to speak in groups and sometimes groups have only one or two people who will speak and the rest are silent.</li> <li>• Individual interviews may allow for more depth to the interview but time constraints may mean that only a very limited number of women will be interviewed.</li> <li>• Group meetings can help build a local community surrounding key issues and can provide valuable insight into the larger community.</li> <li>• Meetings at local authority offices may give the appearance that the interviewer is an agent of the government.</li> <li>• Experience suggests that group size of 7-8 women is ideal. Larger groups will likely not allow for engagement with each woman, and building rapport with the group.</li> <li>• Women usually have limited time. This may limit who can attend the interviews, and at what time they can do so. They may need to have their children present at the interview.</li> <li>• Group meetings held in</li> </ul>	<ul style="list-style-type: none"> <li>• Beginning an interview or group discussion with questions about the women's daily schedule can help interviewers plan future meetings, the length of the meeting, etc.</li> <li>• When engaging drivers, translators, NGOs, and others who will be participating in fieldwork, it may be helpful to advise them that the fieldwork will be arranged at the convenience of the interviewees to the extent possible, and they will be required to work "before hours" and "after hours" as necessary.</li> <li>• Women may only be able to meet in another woman's home or in a place that women frequent (non-governmental; non-public)</li> </ul>

Further Considerations on Methodology			
Considerations	Options	Challenges	Comments
		central locations can be useful in attracting other useful attendees, but may also attract unwanted attention of others in the village.	
Arrangement of interviews	<ul style="list-style-type: none"> <li>• Via NGO</li> <li>• Via local authority</li> <li>• Via organization for whom the fieldwork is being done</li> <li>• Via local team members (interpreters, local professionals)</li> <li>• Impromptu</li> </ul>	<ul style="list-style-type: none"> <li>• Recruitment of meeting attendees can be driven by local politics. While recruiting women through local authority will likely ensure good turnout, these women may not be neutral in their perspectives or may be concerned about saying too much. Using local authorities often may mean also that only women who are active in local politics are interviewed, skewing the responses.</li> <li>• NGO's and local team members may suggest interviews with women who are active in the NGO or another NGO rather than the "ordinary" women, possibly providing a slanted perspective.</li> <li>• Person(s) or organizations arranging the interviews may not be familiar with the village protocols.</li> <li>• In some cases, local team members may or may not have contacts in the areas where interviews are needed.</li> </ul>	<ul style="list-style-type: none"> <li>• During the scheduling of interviews make note of women who appear to be leaders in the community or within a group. These individuals can often be approached later to assist in obtaining more specific information, developing action plans and the like.</li> <li>• In some cases, research teams can enter areas and conduct impromptu interviews without prior arrangements. Research teams should consider beginning by meeting with the local authority for the area (traditional and official, if different), explain the work, and ask permission. Some leaders will deny access or try to control the interviews, but in other areas, the method can yield great results.</li> </ul>
Men and/or NGO representatives in "women-only" meetings	<ul style="list-style-type: none"> <li>• Men among project staff</li> <li>• Men from host community</li> <li>• Male interpreters</li> </ul>	<ul style="list-style-type: none"> <li>• Raising men's awareness on women's land rights is important; but men/NGO representatives may</li> </ul>	<ul style="list-style-type: none"> <li>• Often a difficult choice must be made between a talented male interpreter and a female interpreter</li> </ul>

Further Considerations on Methodology			
Considerations	Options	Challenges	Comments
		<p>dominate the discussion and/or women may not express themselves freely in front of men (project staff or host community) in mixed-sex meetings.</p> <ul style="list-style-type: none"> <li>• Often when men are present, other men will join the conversation severely limiting women's willingness to talk.</li> <li>• The presence of any man, including interpreters, can be problematic for women. Many cultures do not allow men and women to mix. Also, men often introduce a different dynamic to the discussion.</li> <li>• If a male is involved in the meetings, be very sensitive to women's unwillingness to talk and not push the group or individuals.</li> </ul>	<p>with poor skills (or female interpreter for another region, ethnicity, etc.). If possible, leave time to try out different interpreters on the job before selecting one for the bulk of the fieldwork. If only male interpreters are available, include at least one local woman sensitive to the potential problems to advise when the interviewee is unresponsive, uncomfortable, or of there are other problems with the accuracy of information being gathered.</p>
Engaging people on land issues (land may not be a priority issue or it might be too sensitive an issue)	<ul style="list-style-type: none"> <li>• Consider beginning with a description (with examples) of what the land issues are/might be so the interviewee(s) can evaluate whether they face /might face those issues.</li> <li>• Listen carefully to their issues, consider connecting with land issues where links exist.</li> <li>• If there are no</li> </ul>	<ul style="list-style-type: none"> <li>•</li> </ul>	<ul style="list-style-type: none"> <li>• Even in areas where there are no land issues or issues relating to the project topic, useful information can be gathered about women's daily routines, food security, consumption patterns, household labor division, relationships with spouse, income sources, wages, inheritance practices, and so forth that will</li> </ul>

Further Considerations on Methodology			
Considerations	Options	Challenges	Comments
	links to be made, take as much info. as is of value and shorten the meeting		assist in building a general sense of the community and region.
Local gender experts	<ul style="list-style-type: none"> <li>Local gender expert may be used as the local expert on land issues, as a facilitator, for interpretation, for recording notes.</li> </ul>	<ul style="list-style-type: none"> <li>While there will be a temptation to use the local experts for a diversity of tasks, their role should be carefully considered. Many local gender experts will not be familiar with land issues and will need to be familiarized on key land issues.</li> <li>Using local experts as interpreters will limit their ability to participate as an expert.</li> <li>Encourage local gender expert to take notes and discuss her impressions.</li> <li>Local gender expert may want to lecture or “train” women, or may dispute what women say. It will be necessary to discuss expectations for her role and ask for her input into interviewing topics and techniques.</li> <li>If the gender expert comes from a class, area, ethnic group, etc. that is unlike that of interviewees, he/she may make incorrect assumptions, and not allow for open exchange</li> </ul>	
Size of team conducting interviews (interpreter, note-taker)	Separate facilitator, interpreter and note taker may add to the size of the team conducting interviews.	<ul style="list-style-type: none"> <li>A large team will facilitate effective and efficient data gathering and recording; however, it may be intimidating for local groups especially where the size</li> </ul>	



Further Considerations on Methodology			
Considerations	Options	Challenges	Comments
		<p>of women's groups is small or where only one woman is being interviewed.</p> <ul style="list-style-type: none"> <li>A small team (as small as a researcher and interpreter) can be effective especially when the group of interviewees is small.</li> </ul>	
Issues of cultural sensitivity	<ul style="list-style-type: none"> <li>Some topics will be of sensitive nature, especially when talking to women representing special categories (widows, women in polygamous relationships, or women in/of specific ethnic groups). Options may include focused discussions with sub-groups.</li> </ul>	<ul style="list-style-type: none"> <li>Time constraints may not allow for interviews with focused sub-groups.</li> <li>People in smaller groups may still be unwilling to discuss sensitive issues.</li> </ul>	<ul style="list-style-type: none"> <li>Interpreters should be advised to watch for these circumstances and advise the researchers so adjustments can be made.</li> </ul>
Length of questionnaire	<ul style="list-style-type: none"> <li>Comprehensive versus issue specific interviews.</li> </ul>	<ul style="list-style-type: none"> <li>In-depth full interviews may not be possible in many instances due to time constraints. Consider collecting general information from 2-3 persons who may be most accessible, focusing interviews with local women on specific critical issues that may be identified ahead of time, or encountered at the time of the interviews.</li> </ul>	
Compensation for interviewees	<ul style="list-style-type: none"> <li>Some local communities and NGOs may expect compensation for the interviews.</li> </ul>	<ul style="list-style-type: none"> <li>Discuss with trusted local colleagues on appropriate compensation for time devoted by local</li> </ul>	

Further Considerations on Methodology			
Considerations	Options	Challenges	Comments
	These may involve cash for lost wages, transport, communications, or otherwise; refreshments; or other gifts	<p>communities and/or NGOs. Plan compensation accordingly.</p> <ul style="list-style-type: none"> <li>• Small gifts of food are often appreciated but ensure that the refreshments are enough for everyone.</li> <li>• When repeat interviews are taking place, certain projects may get the reputation for handing out gifts, and focus group organizers may select the same people to participate, skewing results by limiting the pool.</li> </ul>	

# APPENDIX D. HIGH LEVEL OUTLINE OF ASSESSMENT REPORT

**Key Considerations:** Geopolitical, Agriculture, Women Overview; Regional Differences; rural/urban differences; religious, ethnic, or tribal differences where applicable.

## 1.0 Background

General Overview

Geography

Demographics

Historical issues of great importance (e.g., wars and other conflicts,, etc.)

Social Factors (ethnic breakdown, religious breakdown)

Economic Issues (overall/and disaggregated for gender)

Dependence on land and natural resources (see key considerations above)

The disadvantaged groups (specific groups of women/children)

**Key Considerations:** See attached model questionnaire

## 2.0 Methodology

Context for this research

Location of field data collection

Timing of data collection

Techniques for data collection (Focus groups, interviews etc.)

Number of people interviewed (approximate)—disaggregated by sex

Types of people interviewed (disaggregated by social/political/administrative position, sex, religious and/or ethnic background, age, and marital status)

## 3.0 Description of Field Sites

## 4.0 Land and Natural Resource Systems

### A. Introduction

1. Land reform and land related history of field sites (including land-related history)
2. Legal pluralism

### B. Formal Systems for Land and Natural Resource Management

**Key Considerations:** Provide an overview of land and natural resource related laws as they influence long and short term use, management, control and ownership rights of individuals, communities, state, and others (Churches, NGOs, companies, etc.). Describe any regional differences in land legislation; formal religious, ethnic, or tribal law differences where applicable.

**Source of Information:** Desk analysis of laws and regulations, literature review, local informants.

1. Land-related Legal Overview
  - a. The Constitution
  - b. Land Policy
  - c. Land Laws
  - d. Laws Related to Natural Resources

### C. Customary Systems for Land and Natural Resource Management

**Key Considerations:** Describe any regional differences; rural/urban differences; religious, ethnic, or tribal differences where applicable.

**Source of Information:** Analysis of customary laws and systems, questionnaire.

1. Land use, management/control and ownership rights
  - a. Individual (natural and legal entities)
  - b. Communal ownership
  - c. State ownership
  - d. Other (Church, NGO, etc.)
2. Customary family overview
  - a. Matrilineal/patrilineal
  - b. Matri-local/patri-local
  - c. Polygamous/monogamous

3. Women's activities
  - a. Involvement in farming
  - b. Involvement in informal sector
  - c. Traditional/current role of women in land natural resource management (including secondary rights over other people's private holdings)
  - d. Production of subsistence and cash crops
  - e. Ability to derive income from land and natural resources
4. Analysis and critical challenges being faced by local communities
  - a. Landlessness
  - b. High level of land-based inequality (ownership, access)
  - c. Land scarcity
  - d. Poor land quality
  - e. Excessive restrictions, etc.

#### **D. Transitional Land and/or Natural Resource Systems**

**Key Considerations:** The following groups of people should be considered: refugees, Internally Displaced Peoples (IDPs), returnees, demobilized soldiers, orphans. Describe variations based on religion, ethnicity, and tribal affiliations.

**Source of Information:** Analysis of laws and regulations, literature review, questionnaire.

1. Resettlement of refugees or IDPs
2. Redistribution of land or natural resources
3. Restitutions
4. Displacement (land mines, dams, natural disasters, or other causes)
5. Informal Settlements

### **5.0 Legal and Customary Framework for Women**

#### **A. Marriage**

**Key Considerations:** The following themes should be considered in terms of both formal law and customary law: bride price/dowry; polygamy; community property; informal versus formal marriage; women's perception of civil, customary and religious law; obligations for elderly parents associated with marriage and property/natural resource rights. For each sub-heading elaborate on and assess scale of incidence or issue. Describe any regional differences; rural/urban differences; religious, ethnic, or tribal differences where applicable. Capture difference based on age, class/economic status.

**Source of Information:** Desk analysis of laws and regulations; questionnaire.

1. Civil law (Civil Code, Family Law, Constitution, Contract Law)
2. Customary law
3. Religious law (Formal/Informal)
4. Analysis (How does customary and/or religious law affect implementation of civil law?)

#### **B. Divorce, Abandonment, Separation, and Division of Property**

**Key Considerations:** The following themes should be considered within the categories listed below: return of bride price/dowry; polygamy; distribution of property; dissolution of informal and formal marriage; women's awareness of and perception of civil, customary and religious law; obligations for children and elderly parents associated with marriage and property/natural resource rights. For each sub-heading elaborate on and assess scale of incidence or issue. Describe any regional differences; rural/urban differences; religious, ethnic, or tribal differences where applicable. Capture difference based on age, class/economic status.

**Source of Information:** Analysis of laws and regulations, literature review, questionnaire.

1. Civil law (Civil Code, Family Law, Constitution, Contract Law)
2. Customary law
3. Religious law (Formal/Informal)
4. Analysis (How does customary and/or religious law affect implementation of civil law?)

#### **C. Inheritance and Division of Property**

**Key Considerations:** The following themes should be considered within the categories listed below: rights of daughters; rights of wives; how bride price/dowry affects inheritance; polygamy; community property; informal versus formal marriage; women's perception of civil, customary and religious law; status of women – childless, unmarried, or in polygamous relationships. For each sub-heading elaborate on and assess scale of incidence or issue. Describe any regional differences; rural/urban differences; religious, ethnic, or tribal differences where applicable. Capture difference based on age, class/economic status.

**Source of Information:** Analysis of laws and regulations, literature review, questionnaire.

1. Civil law (Civil Code, Family Law, Constitution, Contract Law)
2. Customary law
3. Religious law (Formal/Informal)
4. Analysis (How does customary and/or religious law affect implementation of civil law?)

#### **D. Children and/or Orphans Rights to Land and Natural Resources**

**Key Considerations:** Implications for children of widows, divorced, women in polygamous relationships. Describe any regional differences; rural/urban differences; religious, ethnic, or tribal differences where applicable. Capture difference based on age, class/economic status.

**Source of Information:** Analysis of laws and regulations, literature review, questionnaire.

1. Civil law (Civil Code, Family Law, Constitution, Contract Law)
2. Customary law and women's dependence on children for livelihood needs/access to land
3. Religious law (Formal/Informal)
4. Analysis (How does customary and/or religious law affect implementation of civil law?)

### **6.0 Formalization and Documentation of Women's Rights to Land and Natural Resources**

**Key Considerations:** Describe the process of formalizing and/or documenting rights to land, both in terms of ownership and use rights. Disaggregate by sex. Sub-themes to consider: registration of rights to immovable property, individual ownership, community titles or certificates, group titling, individual or group use rights to land, rights related to wildlife, water, sub-surface minerals, fish, forests, trees, and non-timber forest products. Describe any regional differences or rural/urban differences. Capture difference based on age, class/economic status.

**Source of Information:** Analysis of laws and regulations, literature review, questionnaire.

1. Civil law

2. Field observations and analysis regarding implementation
3. Analysis (key strengths/weaknesses)

### **VIII. Women's Involvement in Land and Resource Transactions**

**Key Considerations:** The following themes should be considered within the categories listed below: women's ability to purchase, sell, lease land or access credit given their marital status, need for written permission from spouse? Do co-owners need to approve a land transaction? Describe any regional differences; rural/urban differences; religious, ethnic, or tribal differences where applicable. Capture difference based on age, class/economic status.

**Source of Information:** Analysis of laws and regulations, literature review, questionnaire.

1. Civil law
2. Customary law
3. Analysis

### **7.0 Governance and Institutions: Women's Participation and Leadership**

**Key Considerations:** The following themes should be considered within the categories listed below: women's engagement in governing institutions – use, access (financial, distance, social prohibitions), enforcement of rights, representation in decision-making (including any training needed), role in decision-making, and access to resources. Describe any regional differences; rural/urban differences; religious, ethnic, or tribal differences where applicable. Capture difference based on age, class/economic status.

**Source of Information:** Analysis of laws and regulations, literature review, questionnaire.

#### **A. Political Institutions**

1. Village Government
2. Regional and National Government
3. Customary Governance (tribal leaders, elders)

#### **B. Religious Institutions**

#### **C. Land Use and Natural Resource Administration/Governance**

1. Informal institutions
2. Formal institutions

#### **D. Dispute Resolution Bodies**

1. Tribal/Customary Courts



2. Civil Courts
3. Religious Courts
4. Do these institutions enforce land rights?

**E. Civil Society and NGOs**

1. Local, regional, national, international NGOs
2. Civil society groups
3. Cooperatives/Associations other agricultural enterprises
4. Other informal women's groups

**8.0 Access to Information about Women's Land Rights**

**Key Considerations:** The following themes should be considered within the categories listed below: traditional leaders, agricultural extension, and formal institutions. Variations based on age, class, economic status, literacy, religious affiliation, ethnic affiliation, tribal affiliation, any rural/urban differences.

**Source of Information:** Analysis of laws and regulations, literature review, questionnaire.

1. Source of information about land/resource rights
2. Literacy levels / Access to education
3. Other potential sources of information

**9.0 Conclusion and Recommendations**

- **General Conclusions:** What is the situation for women and property rights and natural resources? Does formal law support equal rights to use and own land? Does customary law support equal rights to use and own land? What are the major concerns women have regarding land and resource rights?
- **Specific Conclusions:** What are the key issues affecting women's rights to land and natural resources? What should guide the sequence of reforms?
- **Recommendations** (validated with communities and or stakeholders), including prioritization and specific actions. Who, what, where, when, how, as necessary in context of the LARA project.

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